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Congressional Policy  
OF  
Chinese Immigration

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TIEN-LU LI



CONGRESSIONAL POLICY  
OF  
**CHINESE IMMIGRATION**

OR  
LEGISLATION RELATING TO CHINESE  
IMMIGRATION TO THE UNITED STATES

---

By  
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of Doctor of Philosophy, June, 1916*

## P R E F A C E

WHILE an undergraduate at Peking University in 1905 the writer's attention was first attracted to the governmental policy of the United States in the exclusion of Chinese by the incident of the concerted boycott of American goods in China. Coming over to San Francisco three years ago, the writer had the privilege—though not accorded in a pleasant way, being detained and held for observation—of visiting the Detention Station at Angel Island, and there saw the actual conditions and treatment the unfortunate Chinese were meeting with. These two insignificant incidents aroused his interest in this question and furnished him the resolve to make a study of it while here.

Several books and many pamphlets and articles have been written in this country on the question of Chinese immigration; but of the writers, almost all treat the subject from a practical standpoint and make their strongest arguments turn primarily on the point of economic and social interests of this country, leaving untouched the more fundamental and vital question of right or wrong involved in this policy. Moreover, some writers seem to think that the Chinese in this country are, without exception, innocent victims of oppression; and others hold this government absolutely justified in her legislation taken to exclude this undesirable element. The mutually contributory condition, which was probably the real cause for this unpleasant event, seems to have been lost sight of. The present study is made with these two points constantly in view.

That this work, though by no means exhaustive, comes to realize its present completion is made possible by the sympathetic and useful advice and suggestions which the writer has gratefully received from Professors G. W. Dyer, St. G. L. Sioussat, and Edwin Mims. The writer wishes also to acknowledge his indebtedness to Mr. J. C. Ransom, whose service in the perusal of the manuscript and the proof-reading is greatly appreciated.

TIEN-LU LI.

VANDERBILT UNIVERSITY, NASHVILLE, TENN., June, 1916.



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## CHAPTER I

### INTRODUCTORY

To a comprehensive understanding of the legislation enacted to limit; suspend, and prohibit the immigration of Chinese laborers to this country it is essential to know the genesis of the problem. The popular view of the affected sections smacks too much of local feeling to permit a fair treatment of the case. The following is a good example of such views about the Chinese:

The Chinese are inferior to any race God ever made. . . . I think there are none so low. . . . Their people have got the perfection of crimes of four thousand years. . . . I believe the Chinese have no souls to save; and if they have, they are not worth the saving.<sup>1</sup>

If there is any ground for believing that the crux of the Chinese question in the United States does not lie entirely in the evils *per se* as imputed to the presence of Chinese, but also in racial prejudice, then, to understand it, we cannot very well dispense with a brief sketch of the Chinese people as a race.

#### *A Brief Sketch of the History of the Chinese*

According to the recent researches of Dr. Terrien de Lacouperie, China was first settled by people coming from the south of the Caspian Sea, some of whom settled in the fertile districts of the modern provinces of Shan-si and Honan.<sup>2</sup> Semihistoric China goes back as far as 2249 B.C., at which date the astronomical observations as recorded in Chinese annals have been verified by modern calculations.<sup>3</sup> Yet Chinese history begins with the record of the Five Rulers, who lived from 2852 to 2737 B.C. and instituted the calendar, writing, clothing, and marriage, and taught the Chinese people medicine and agriculture.<sup>4</sup> China was made one empire under the reign of Chin-Shih-Hwang 246 or 220 B.C., from which dynasty the Western name for China had its origin.<sup>5</sup>

By a normal expansion China's territory at certain periods has been coextensive with the greater part of the continent of Asia, stretching from India on the one hand to Persia on the other.<sup>6</sup> To the surrounding countries China bore the torch of civilization. As Hon. Chester Holcombe figuratively remarks:

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<sup>1</sup>Frank M. Pixley, representing the municipality of San Francisco before the Congressional Committee of 1876. Quoted from "Chinese Immigration," Mrs. Coolidge, p. 96.

<sup>2</sup>"China," Professor Douglas, pp. 1-2.

<sup>3</sup>"Forty Years in China," R. H. Graves, p. 15.

<sup>4</sup>"China and America To-Day," Arthur H. Smith, pp. 28-29.

<sup>5</sup>"Forty Years in China," Graves, p. 10.

<sup>6</sup>"China and America To-Day," Smith, p. 31.

Prior to the disturbance of her seclusion China had for many centuries been the single central figure in a world largely of her own creation and in which she was the final dominant force. She had been the planet, the powerful, civilized, cultivated empire, surrounded by its circle of admiring satellite kingdoms. . . . They flattered her by the most delicate and subtle of all forms of flattery—imitation. They copied her form of civilization, to a considerable extent modeled their governmental systems after hers, borrowed her religions, several of them adopted her written language, gained their knowledge of the arts and literature from her, and all of them deferred and appealed to her as final authority and sovereign mistress of the Oriental world.<sup>7</sup>

She had little knowledge of the Western world, except for some casual trade with the Romans in the second century B.C. and with the Turks in the fifth century A.D. Her people first looked into the faces of Westerners in the advent of the Portuguese, the Spaniards, and the Dutch in the sixteenth and the first part of the seventeenth century<sup>8</sup> and in the coming of the Jesuits in 1580.<sup>9</sup> The Opium War, in 1842, was the formal but forced introduction of China into the so-called "family of nations." Then treaties were negotiated with foreign powers according them recognition, and ports were opened up to foreign trade.

The Chinese, on the whole, have been well satisfied until recently with a government which was in its nature paternalistic, autocratic, and absolute. But if there is any truth in the political doctrine that the government governs best that governs least, China also can claim a place for her government as having been one of the best. The majority of the people do not concern themselves about the government beyond paying a moderate tax. But it is also true that many a time corrupt practice and injustice on the part of officials aroused the people to the point of revolt. The rebellion of 1851 and the revolution of 1911 are some of the most prominent milestones in the history of the democratic spirit and sense of justice of the Chinese people.

The Chinese society presents a striking phenomenon of conservatism which worships the old and abhors the new. Yet solidarity is another aspect of this huge organization. In theory and practice, Chinese society is founded upon the moral code of five relationships, having for its ideals the virtues of charity, righteousness, propriety, wisdom, and probity.

The Chinaman is religious in his temperament. More than any other people, he believes in the natural law of retribution. This makes him scrupulous, sensitive, and superstitious. The average Chinaman is ignorant in the scientific sense; but his ignorance is due rather to nondevelopment than to lack of intellectual capacity. This has invariably proved to be the case in all the countries where the Chinese intellect is put to the test. Out of a multitude of testimonies I quote the following to show an instance

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<sup>7</sup>"The Real Chinaman," pp. 5-6.

<sup>8</sup>"China and America To-Day," Smith, Chapter v.

<sup>9</sup>"A Cycle of Cathay," W. A. P. Martin, p. 439.

near at hand. The *New York Journal*, commenting on the Chinese boy graduating with high honors at Atlantic City High School in 1904, says:

At every commencement there are honors enough to go around, and those won by the Celestial contestants will not be begrudged them. Yet it is not exactly flattering to smart American youths to realize that the representatives of an effete civilization, after a few years' acquaintance with Western ways, can meet our home talent on its own ground and carry off the prize of scholarship.<sup>10</sup>

The Chinaman's truthfulness seems to be a greatly disputed question, although this is not a settled question with any other nationality. MacGowan says: "A lie to him has no moral side. It is simply a display of cleverness."<sup>11</sup> But over against this charge is also the well-known fact that a Chinaman's word is as good as his bond.<sup>12</sup> The Chinese are peaceful, and this is sometimes mistaken for cowardice. It is only those who are ignorant of Chinese history and willfully blind to what has been and is still going on that will ever question the readiness of the Chinaman to die for a principle or a cause. He is conscious of his nation's weakness, and therefore he seems to be unpatriotic—*i. e.*, unwarlike in the modern sense.

He is so emotional as to be liable literally to "die of anger,"<sup>13</sup> yet he can cover his feelings until his face is no more expressive than a blank page. He is temperate, so that drunkenness is made a rare phenomenon in China; yet he is known to gamble away his property and abandon himself to opium for life. He is cheerful, humorous, and full of fun; yet at times he wears such a morose, sullen, dignified look as would scare away a ruffian. He is adventurous enough to go off to a strange land ten thousand miles away, yet he is superstitious enough to order his remains to be shipped home and buried in the graveyard of his ancestors.<sup>14</sup>

The Chinese people are known to be industrious, economical, and perseverant; and more so are the Chinese laborers, who toil from ten to twelve hours a day for an average wage of thirty cents (Mexican money).<sup>15</sup> These are the people that are most susceptible to the evil effects of floods, droughts, disturbances, and wars. If they have left home at all, they did it only under the lash of destitution and want.

#### *Causes of Chinese Emigration*

Some of the immediate causes that drove the Chinese laborers from home were the ravages of nature inflicted upon an over-

<sup>10</sup>Quoted from "New Forces in Old China," Arthur J. Brown, p. 43.

<sup>11</sup>"Side Lights of Chinese Life," p. 12.

<sup>12</sup>Same author, *ibid.*, and "The Real Chinaman," Holcombe, pp. 287-288.

<sup>13</sup>"Dawn on the Hills of T'ang," H. P. Beach, p. 36.

<sup>14</sup>Common points by many authors.

<sup>15</sup>"Emergency in China," F. L. Hawk Pott, p. 90.

population of an undeveloped country. As S. Wells Williams says:

The evil consequences resulting from an overgrown population are experienced in one or another part of the provinces almost every year; and droughts, inundations, locusts, mildews, or other natural causes often give rise to insurrections and disturbances."<sup>16</sup>

The Opium War with England in 1842 and the Arrow War with England and France in 1856, during which time Canton Province was the main scene of military operations, ended in the payment of a large amount of indemnity (opium indemnity, \$21,000,000),<sup>17</sup> which raised the taxes of the people. Added to this were the devastations of the Tai-ping Rebellion of 1851, which raged for a period of fifteen years, leaving carnage and ruin in its trail of two thousand miles, from Kwang-si to Tientsin.<sup>18</sup> And Canton suffered in common with the rest.<sup>19</sup>

It was at this period that we first learned of the going out of the Chinese. Coloquoun says that in 1849 thousands of Chinese poured into Hongkong to procure through English intermediary employment in the gold mines in America.<sup>20</sup> Williams says:

During this year (1856) the emigration to California and Australia became larger than ever before, . . . owing to the multitudes thrown out of employment, who were eager to accept the offers of the brokers to depart from the country and escape the evils they saw everywhere about them.<sup>21</sup>

This voluntary efflux of Chinese was augmented only by a sinister tributary of kidnaping. The Portuguese had established barracoons at Macao and sent out secret agents to catch the unfortunate natives to ship them to Peru and Cuba.<sup>22</sup> But very few of such ever came to the United States.

The "Golden Romance" in America was a strong factor that attracted the "phlegmatic Chinese" to venture away from home. Gold mines were first discovered at Coloma in 1848. The mining towns enjoyed their greatest prosperity from 1852 to 1860. The annual product was estimated at \$20,000,000.<sup>23</sup> The rumors of the gold diggings being open to Chinese labor in California were spread broadcast, especially when some Chinese miners had already returned, taking with them some thousands of dollars in California gold to confirm the enticing reports.<sup>24</sup>

As a result, to use Tuthill's words, "Tempted by gold out of

<sup>16</sup>"The Middle Kingdom," p. 280.

<sup>17</sup>"The Real Chinaman," Chester Holcombe, p. 12.

<sup>18</sup>"The Middle Kingdom," p. 623.

<sup>19</sup>*Ibid.*, p. 630.

<sup>20</sup>"China in Transformation," p. 316.

<sup>21</sup>"The Middle Kingdom," p. 63.

<sup>22</sup>For a description of the process, see "A Cycle of Cathay," W. A. P. Martin, pp. 31ff.

<sup>23</sup>"Resources of California," John S. Hittell, p. 269.

<sup>24</sup>*Blackwood's Magazine*, Vol. 72, "The Celestials at Home and Abroad," p. 100, or *Daily Alta*, California, May 12, 1851.

their 'Central Kingdom,' they began to arrive, but not very numerous, in 1850. By the spring of 1852 there were ten thousand of them in the State and by the close of that year perhaps eighteen thousand. Most of them go to the mines."<sup>25</sup> (For the table showing the Chinese population in mining districts up to 1870, see Appendix C.)

The demand for labor in the construction of the Central Pacific Railroad added another factor to the list of those attracting the Chinese immigration to the United States. Writing in December, 1896, A. D. Richardson says:

In the remote antiquity of five years ago half a dozen Sacramento gentlemen began to build the Pacific Railroad. White labor was not merely costly; it was absolutely unattainable. Chinamen, therefore, were brought in, and in the spring of 1865 they began to swarm upon the Sierras like flies upon a honeycomb. . . . At last twelve thousand were working upon the roads."<sup>26</sup>

Most of these people came from six districts of a single province of Kwangtung, or Canton.<sup>27</sup> But there has been a controversy as to the way in which the Chinese laborers came to this country—whether they were voluntary immigrants or coolie labor.

#### *The First Chinese Immigrants into the United States*

It is true that the coolie traffic had been going on since 1847.<sup>28</sup> But the government of the United States, even before any direct legislation against coolie trade,<sup>29</sup> was entirely too vigilant and jealous of her free institutions to allow the practice of this traffic to extend to the boundaries of her dominion. After careful investigation, Russell H. Conwell remarks:

I can find no confirmation of the rumor that shiploads of stolen or purchased coolies were landed at San Francisco in 1854. There may have been cargoes obtained by misrepresentation; . . . but no laborers were ever brought into San Francisco who were either salable slaves in China or intended to be such after landing in California.<sup>30</sup>

The best authorities seem to be of the opinion that the first Chinese laborers coming to the United States were free immigrants or runaways from their bondage in Peru or Cuba. Here are two statements:

From the forcibly opened ports of China slavers bore coolies to Peru. In the year 1850 a score of these Chinese escaped from bondage and, on one pretext or another, obtained passage on a vessel bound for California

<sup>25</sup>"History of California," p. 369.

<sup>26</sup>*Atlantic Monthly*, Vol. 24, "John," pp. 741-742.

<sup>27</sup>Senate Document No. 162, Fifty-Seventh Congress, First Session, p. 14.

<sup>28</sup>The sailing of Don Pedro, in June, 1847, marked the beginning of this traffic. "Why and How," Russell H. Conwell, p. 85. ? 24! 83!

<sup>29</sup>First direct legislation against coolie trade, February 19, 1862, United States Statutes at Large, December 5, 1859, to May 3, 1863, p. 341.

<sup>30</sup>"Why and How," p. 128.

in the early gold-dust days. They saw the wealth and freedom of the country, its high productiveness, the high wages paid to labor. But not all of these could keep them long, and in the course of two or three years they had found their way home. Soon the returning wanderers spread over the whole country by and beyond Canton the tale of the new land.<sup>21</sup>

Russell H. Conwell, refuting the idea that the first Chinamen were "gold hunters," says:

They came from Peru in two vessels that put in at Callao for repairs while *en route* from New York to San Francisco in 1848 or 1849. They were fugitives from their masters in Peru and, by pretending to have worked out their contract, secured employment as sailors; while others, by the assistance of these, stowed themselves away until the vessel was too far at sea to put them back on shore. There were about twenty of these men in all; and they were employed for some time at the rickety old wharf in San Francisco discharging cargoes of sailing vessels which began to arrive at that port. One or two vessels from China, with Chinese cooks and servants, happening into the port soon after, these wharfmen induced their countrymen to stay with them. In this way the number increased to one hundred before they ventured into the mining districts. . . . Not one of them had ever heard of gold in California before their departure from China.<sup>22</sup>

Owing to the attractions of the country and to the demand for their labor, the Chinese population in the United States has increased rapidly since 1852. Here is a tabular statement as abstracted from the census reports from 1850 to 1900:

Year .....	1850.	1860.	1870.	1880.	1890.	1900.
Chinese population.....	775	35,565	63,042	104,468	106,688	81,827

This rapid increase was made possible by the facilitated means of transportation (from three to four weeks on a steamship), by the reduced passage (thirty dollars from Hongkong to San Francisco and ten dollars back),<sup>23</sup> and by the well-organized agencies for advancing money and securing employment (the Chinese "six companies").<sup>24</sup>

As the Chinese laborers did not look to a permanent stay in this country, few of them ever brought their families with them. This accounts for the small number of Chinese women in the United States. Referring to the census report of 1900, Mrs. Mary Roberts Coolidge says that there was only one Chinese female to each twenty-six males in the United States.<sup>25</sup> (For the table showing the Chinese women in the United States at different periods, see Appendix F.)

<sup>21</sup>"The Chinese and the Chinese Question," James A. Whitney, pp. 107-108.

<sup>22</sup>"Why and How," pp. 125-126.

<sup>23</sup>See "The Chinese and the Chinese Question," James A. Whitney, p. 127.

<sup>24</sup>For an interesting account of transportation, read "Why and How," Russell H. Conwell, Chapters xii., xiv., xv., and xvii.

<sup>25</sup>"Chinese Immigration," footnote, p. 19.

*Work, Wages, and Standard of Living of Chinese Laborers*

When the mining industry in California began to decline after 1860, Chinese laborers sought employment in other occupations and trades. In 1886, when W. W. Stone wrote upon this subject, the following statement was given:

Industries entirely in the hands of Chinese: Slippers, brooms, pork trade, drying and exporting fish, underwear.

Nearly so: Cigars, white shirts, boots and shoes, tin and willow ware, ranching, jute-making, laundry, domestic service.

Largely so: Smelting works, fishing, collar-making, saddle-making, soap factories, chemical works, powder factories, straw boards, vegetables.\*\*

The monthly wages during the mining days ranged from \$28 to \$30, while the railroad paid the Chinese laborers \$31 a month without board.<sup>37</sup> Chinese cooks and house servants received monthly pay of from \$40 to \$50. The average pay for the Chinese laborer was a dollar a day.<sup>38</sup> Here is a tabular statement from the memorial of the Chinese Exclusion Convention of 1901 to Congress:<sup>39</sup>

Class of Labor	Average Wage	With or Without Board
Domestic servants .....	\$21 50 per month	With
Cooks .....	20 00 per month	With
Laundrymen .....	10 00 per month	With
Farmers .....	22 50 per month	With
Bricklayers .....	30 00 per month	Without
Slipper makers .....	4 50 per week	Without
Bag makers .....	5 25 per week	Without
Miners .....	1 75 per day	Without
Canners .....	1 00 per day	Without
Boot and shoe makers .....	1 25 per day	Without
Cigar makers doing piecework.....	\$4 to 7 00 per week	Without

The living of the Chinese laborer was characterized by some very frugal and saving habits. Out of his wages the average laborer saved a large portion to support his family at home in China. A. D. Richardson said in 1869: "Once in ten days John (Chinaman) would take a holiday. He received from \$30 to \$35 per month in gold. Of this he would save from \$20 to \$23 and send most of it home to China."<sup>40</sup> From this we may safely conclude that the living standard of the Chinese laborers in this country could not have been very high in comparison with that of the natives. They wore Chinese clothes, lodged by themselves, and did their own cooking. Most of the materials they

\*\**Overland Monthly*, N. S., Vol. 7, "The Knights of Labor on the Chinese Labor Situation," p. 228.

<sup>37</sup>*Forum*, Vol. 29, "The Attitude of the United States toward the Chinese," Ho Yow, p. 388.

<sup>38</sup>*Forum*, Vol. 32, "Chinese in America," Sun-yow Pang, p. 608.

<sup>39</sup>"Some Reasons for Chinese Exclusion," Senate Document No. 137, Fifty-Seventh Congress, First Session, p. 13.

<sup>40</sup>*Atlantic Monthly*, Vol. 24, "John," p. 742.



consumed were imported from China or were of the cheapest kind they could get in America. The following table will give some idea about their living, although considerable allowance should be made in regard to its accuracy:<sup>41</sup>

COST OF LIVING

Rent per month .....	\$ 2 to \$ 4
Food per month .....	5
Clothing per year .....	10 to 12
Food used, home product .....	25 per cent
Food imported from China .....	75 per cent
Clothing, American manufacture .....	20 per cent
Clothing imported from China .....	80 per cent
Yearly earnings sent to China .....	75 per cent

*Hostile Feeling and Maltreatment on the Pacific Coast*

At first Chinese were looked upon with curiosity and favor because of their peaceful nature, their peculiar looks, and their strange costumes. When the competition in wages and employment commenced to make itself felt, the natives, as well as other foreigners, raised a hue and cry against the industrious but cheap-laboring Chinamen. Then the slogan sounded abroad, "The Chinese must go." As early as 1852 Governor Bigler of California delivered a special message denouncing the coming of the Chinese.<sup>42</sup> In his annual message delivered January 1, 1855, the presence of Chinese was again deprecated.

Following this the hostile sentiment of the State found expression in many legislative measures discriminating against the Chinese,<sup>43</sup> and horrible acts of wanton violence in robbery and murder were perpetrated upon the helpless Chinese. The *Shasta Republican* of December 18, 1856, says:

Hundreds of Chinamen have been slaughtered in cold blood in the last five years by the desperadoes that infest our State. The murder of Chinamen was of almost daily occurrence; yet in all this time we have heard of but two or three instances where the guilty parties were brought to justice and punished according to law. Many persons have avowed themselves opposed to the execution of white men for the murder of Chinamen.<sup>44</sup>

While the Chinese in the United States were pleading vainly for just treatment and the Chinese government was protesting vainly against such persecutions, Mr. Burlingame, at the head of the first Chinese mission to the foreign powers, came to the

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<sup>41</sup>"Some Reasons for Chinese Exclusion," Senate Document No. 137, Fifty-Seventh Congress, First Session, p. 13.

<sup>42</sup>Executive Department, Sacramento City, April 23, 1852.

<sup>43</sup>For a brief digest of the Chinese immigration acts of California, see Senate Document, Sixty-First Congress, Third Session, Vol. 21, pp. 533-534; and for the various other acts, see the statutes of California after 1855 to 1874.

<sup>44</sup>Quoted from "Appendix to the Opening Statement and Brief on the Chinese Question," B. S. Brooks, p. 4.

United States and concluded a convention with the United States government in 1868, which recognized the free immigration from China and put the United States government under obligation to protect the Chinese immigrants within her borders. This served as a check upon the discriminative legislation of California against the Chinese, and thereupon many of her acts were declared unconstitutional and were repealed as being in contravention of the treaty. Thus the Pacific Coast was driven to seek a remedy for the so-called Chinese evil through Federal legislation.

This leads us to a discussion of the restriction legislation relating to the immigration of Chinese into the United States.

## CHAPTER II

### TREATY OF 1868; OR, THE BURLINGAME TREATY

IN this chapter nothing except that directly bearing on, or indirectly throwing light upon, the question of Chinese immigration shall be our field of discussion. The significance of this treaty is its reciprocity, which is the main feature in which it differs from the preceding treaties or conventions.

Treaty relations between the United States and China date back to 1844, when a treaty was concluded under the diplomacy of Ambassador Caleb Cushing. The convention was revised and modified fourteen years afterwards, and the result was the Treaty of 1858, negotiated under the ambassadorship of Mr. William B. Reed.

These treaties, though negotiated explicitly on the basis of amity and friendship, show in their provisions a remarkable absence of mutuality or reciprocity. This is plainly seen in Article 19 of the Treaty of 1844 and in Article 11 of the Treaty of 1858, which provide for the adequate protection of the citizens of the United States residing or trading in China and omit to make mention of the protection of Chinese in the United States. Even the first article of both treaties, which can almost be construed as mutually providing peace and friendship between the two peoples, have reference to "people," "person," and "place," "respectively," in China, and not to the same in the United States.<sup>1</sup>

The reason for these one-sided treaties is apparent when we recall the circumstances under which they were negotiated. The first was negotiated after the Opium War with England, when the United States took advantage of the situation to secure commercial privileges in China.<sup>2</sup> The second was negotiated after the Arrow War with England, when the Allies pressed for a revision of the treaties with China.<sup>3</sup> In both cases China was under duress, and America followed the lead of the European powers to establish the open-door policy in China. As China did not expect to have any large-scale dealings with America on this side of the waters, and as America was confident of herself in according protection and justice to any people who might wish to reside or trade within her borders, so no specific provisions were thought necessary to be made to that effect in regard to the Chinese in America.

Another point of significance is attached to this Treaty of

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<sup>1</sup>Treaties and conventions since July 4, 1776, Forty-First Congress, Third Session, 1870-71, pp. 131-165.

<sup>2</sup>"American Diplomacy in the Orient," J. W. Foster, pp. 77-80.

<sup>3</sup>More complete information is given in W. A. P. Martin's "A Cycle of Cathay," Chapters x, xl, pp. 143-189.

1868 by the novelty of the appointment of the Chinese embassy. Anson Burlingame, after six years' service as Minister of the United States at Peking, had won the confidence and good will of the Chinese government by his peaceful and friendly manner of managing affairs. On being requested to represent China "officially" to the treaty powers, he resigned his office as United States Minister "in the interest of his country and civilization." He was appointed by the Chinese Emperor on November 22, 1867, as "the High Minister empowered to attend to every question arising between China and the treaty powers."<sup>4</sup>

The Chinese envoys arrived at Washington on June 2, 1868,<sup>5</sup> and entered at once into negotiations for a treaty containing additional articles to the treaty of June 18, 1858. The negotiations were conducted by personal colloquies between William H. Seward, Secretary of State, and the Chinese envoys, headed by Anson Burlingame. This accounts for the lack of notes or documents relating to the negotiations among the official records.<sup>6</sup>

This compact was drafted by Secretary Seward with his own ideas of what was right and proper under the circumstances. However, this is only an inference from the fact that he in a dispatch to Mr. Browne, the new American Minister to China, referred him to Mr. Williams's motion of the previous May that negotiations for the revision of the American treaty with China be commenced during the coming year "to obtain the same advantages for our (American) countrymen which others enjoy." On July 4 the treaty was signed at Washington; on the 11th it was transmitted to the Senate, which on the 16th ratified it with but few and slight modifications.<sup>7</sup>

A scrutiny of the convictions of the negotiators is necessary to an understanding of the tenor of the treaty. Secretary W. H. Seward had been cherishing a great future for the United States in the Pacific Ocean and was, therefore, unqualifiedly in favor of Chinese immigration and persistently maintained that immigration was an element of civilization, especially to the Pacific Coast.<sup>8</sup>

<sup>4</sup>"Diplomatic Correspondence," Fortieth Congress, Third Session, Vol. 1, 1868-69. For Burlingame's resignation, see p. 493; his interview with Prince Kung, p. 494; his appointment, p. 494; Emperor's rescript, p. 498. For personnel of the embassy, see pp. 494-498.

<sup>5</sup>For presentation of credentials, see *ibid.*, p. 601; for meeting at the Executive Mansion and Burlingame's address to the President and the President's reply, see pp. 603-604.

<sup>6</sup>Letter from Hon. F. W. Seward to F. W. Williams, June 14, 1911, quoted in "Anson Burlingame and the First Chinese Mission to Foreign Powers," F. W. Williams, p. 145.

<sup>7</sup>"Diplomatic Correspondence," Fortieth Congress, Third Session, Vol. 1, p. 573, 1868-69; "Anson Burlingame and the First Chinese Mission to Foreign Powers," F. W. Williams, p. 146; "American Diplomacy in the Orient," J. W. Foster, pp. 144, 265.

<sup>8</sup>"Appleton's Annual Cyclopaedia," Vol. 8, 1868, p. 113.

<sup>9</sup>"Seward's Works," Vol. 5, p. 50.

Anson Burlingame came with the conviction that, in the interest of the welfare of the Chinese Empire and the advancement of civilization, China should be put upon terms of equality, and that the treaty powers must abandon their coercing policy toward China and adopt the "coöperative policy."<sup>10</sup> In a speech he said:

It is in behalf of that generous policy founded on principles of eternal justice that I would rally the strongest thing on earth, the enlightened public opinion of the world. Missions and men may pass away, but the principles of eternal justice will stand. I desire that the autonomy of China may be preserved. I desire that her independence may be secured. I desire that she may have equality, that she may dispense equal privileges to all nations.<sup>11</sup>

The Chinese mission came, and the resultant treaty was negotiated at a time when the anti-Chinese feeling in California had found its undue expression in several laws passed by the State Legislature to discriminate against the Chinese.<sup>12</sup>

This feeling gave way to the more agreeable one of cordiality, and the Pacific Coast hailed the treaty with no less triumph and zeal than her sister States on the Atlantic Coast. Several facts account for this change of sentiment.

First, the anti-Chinese feeling had never been general among the people of the Pacific Coast. This was clearly stated by Mr. J. Ross Browne, the new American Minister to Peking, in a note from Oakland, Cal., to the Chief Clerk of the State Department, Robert S. Chew:

It may interest you to know that the new treaty as reported by telegraph has met with the cordial indorsement of the press of California. There is no unfriendly feeling here toward the Chinese among the influential and respectable class of the community.<sup>13</sup>

Second, all the people of the Pacific Coast were invariably in favor of large commerce with China. This was voiced through the address of Governor Haight at the dinner given in honor of the Chinese envoy when they first landed at San Francisco (April, 1868):

<sup>10</sup>See his speech to City Council in Boston, August 21, 1868, partially reproduced in Williams's "Anson Burlingame and the First Chinese Mission to Foreign Powers," pp. 148-152, and his speech to the leading merchants' gathering in New York, June 23, 1868, *ibid.*, pp. 134-139.

<sup>11</sup>*Ibid.*, p. 137.

<sup>12</sup>Miner's tax law, 1855; Chinese passenger tax law, 1855; exclusion act, 1858; white labor protection act, 1862. See collection of statistics by Daniel Cleveland, of San Francisco; "Diplomatic Correspondence," Fortieth Congress, Third Session, 1868-69, Vol. 1, pp. 533-534; and also see "California Statutes" of the respective years: 1855, Chapter cllii., p. 194; 1856, Chapter clxxiv., pp. 216-217; 1858, Chapter cccxiii., pp. 295-296, Chapter cccxiv., pp. 302-303; 1862, Chapter cccxxxix., p. 462.

<sup>13</sup>United States Department of State MSS., "China," Vol. 28, Browne to Chew, August 2, 1868.

Opinions might differ upon the question of immigration and other subjects; but there was, and could be, no difference of opinion upon the desirableness of unrestricted commercial intercourse with China and with all nations.<sup>14</sup>

Third, even the laboring class, among whom the anti-Chinese feeling was known to be the strongest in crying against the competition of the imported contract labor from China, found gratification in the clause of the treaty which made it a penal offense to import involuntary immigrants into this country.<sup>15</sup>

Fourth, the Pacific Coast was eagerly looking forward to a period of unprecedented prosperity at the completion of the Pacific Railroad, which many thousand Chinese laborers were being engaged to build at this time, and which, when completed, would bind the Atlantic and the Pacific territories of the nation in an indissoluble union and would be a strong factor in the development of the Pacific States.<sup>16</sup> Therefore the clause which provided for free immigration of Chinese did not invite any serious criticism, even from the laboring people; for the Chinese were the only available labor for the construction of the road.<sup>17</sup>

President Johnson, in communicating about the negotiations to Congress, spoke of it as a "liberal and auspicious treaty."<sup>18</sup> At the hesitancy of the Chinese government to ratify this treaty, President Grant, through Secretary Fish, instructed the American Minister at Peking to exert his influence with the Chinese government to bring about its early ratification.<sup>19</sup> This goes to show what importance the American government attached to this instrument.

However, the general éclat was no bulwark to keep the treaty from falling into disrepute when the brilliancy of success had once passed and things again looked natural. The slow ratification by the Chinese government, not completed till November 20, 1869, and the Tientsin massacre of French missionaries in 1870 revived the long-interned criticism of Burlingame's misrepresentation of China:

The conduct of Mr. Burlingame, the head of this mission, has destroyed our pleasing anticipations. His absurd description of China in a public speech at New York has covered him with ridicule from all who know how widely different is the original from the picture.<sup>20</sup>

The congestion of the California labor market by ten thousand white and Chinese laborers discharged at the completion

<sup>14</sup>*Blackwood's Magazine*, Vol. 105, "The Chinese Mission to Christendom," 1869, p. 199.

<sup>15</sup>See Treaty of 1868, Article 5, "Treaties and Conventions Since July 4, 1776," Forty-First Congress, Third Session, 1870-71, p. 167.

<sup>16</sup>"American Diplomacy in the Orient," J. W. Foster, p. 283.

<sup>17</sup>*Forum*, Vol. 29, "The Attitude of the United States toward the Chinese," Ho Yow, pp. 388-389.

<sup>18</sup>"Presidents' Messages," Vol. 6, p. 690.

<sup>19</sup>United States Department of State MSS., Vol. 28, No. 69.

<sup>20</sup>"Retrospect of Political and Commercial Affairs," editor of *North China Herald*, Shanghai, 1873, p. 8.

of the Pacific Railroad in 1869, together with the continued shiploads of laborers from China, was confusedly regarded as the immediate injurious effect of the treaty. In fact, speaking of the "forced stimulus to Chinese immigration" given by the Burlingame Treaty, James A. Whitney says:

Even as concerns the Chinese in their own country, the direct consequence of the artificial impulse given to the importation of Chinese laborers was in many respects no less than an unmitigated wrong. . . . Such was one of the incidental results of the unnatural and forced impetus given to Chinese immigration consequent upon the inception and adoption of the Burlingame Treaty.<sup>21</sup>

In later years, when the Chinese question had become a political asset, came the denouncement aimed point-blank at the treaty and its author:

We charge that Anson Burlingame sold his country's birthright for Chinese money. . . . For the purpose of obtaining prestige with which he might work upon Great Britain in the interest of China and earn his fee, Mr. Burlingame induced his country to yield up a sovereign attribute never before surrendered by any free people. Among them they bartered away . . . the right to determine who shall come and who shall not come to this new and growing country of ours, live on its soil, enjoy its privileges, and mingle freely with its people. . . . It was conceived in fraud and chicanery. It was negotiated at a time when no treaty was wanted by either country and not for the purpose named in the treaty.<sup>22</sup>

Now we are sufficiently prepared to enter into a discussion of those articles of the treaty, to gauge the import and value of their provisions with reference to the question of Chinese immigration.

In Article 3 it is agreed "that the Emperor of China shall have the right to appoint consuls at ports of the United States." This is only a reciprocal grant of a privilege to China of what China had already granted the United States in 1844 and also in 1858.<sup>23</sup> That this reciprocal grant of privilege was necessitated by expediency to relieve the wretched condition of the Chinese immigrants in this country is clearly stated in a dispatch from Secretary Seward to Minister Browne, September 7, 1868, which says:

I have given particular attention to the suggestions contained in Mr. Williams's dispatch concerning the want of friendliness and sympathy toward the Chinese immigrants and laborers which has been manifested in our new States and Territories on the Pacific Coast. . . . China has heretofore preferred to remain without diplomatic representation in the United States and even without representation by consular or commercial agents in the United States ports. Aggrieved Chinamen have thus had no offi-

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<sup>21</sup>"The Chinese and the Chinese Question," pp. 179-181.

<sup>22</sup>Anti-Chinese memorial to Congress, 1886, drafted by John F. Swift, A. A. Sargent, Morehouse, Davis, and Anthony.

<sup>23</sup>See Article 4 of Treaty of 1844 and Article 10 of Treaty of 1858, "Treaties and Conventions Since July 4, 1776," Forty-First Congress, Third Session, 1870-71, pp. 132, 148.

cial channel through which to convey their complaints to the government at Washington. . . . In the treaty which we have recently negotiated with the Chinese envoys we have endeavored to provide a remedy for the existing evils.<sup>24</sup>

Article 4 provides that "Chinese subjects in the United States shall enjoy entire liberty of conscience and shall be exempt from all disability or persecution on account of their religious faith or worship in either country," which is also a reciprocal grant of a privilege which China had granted to the United States citizens in the Treaty of 1858.<sup>25</sup> Prof. Mayo Smith spoke of this provision in the following terms:

The reciprocal privileges granted to the Chinese of free exercise of their religion here and to Americans of free entrance to the educational institutions in China were of no practical value; one was already enjoyed, and the other would hardly be desired.<sup>26</sup>

The necessity of this provision was deduced from the existing condition and urged by the foresight of the negotiator of the treaty, who was not blind to the smoldering embers of hostility toward the Chinese on the Pacific Coast, which would some day seize upon anything for an excuse for persecution. This came true in 1876, when the county and city of San Francisco passed an ordinance forbidding the discharging of "Chinese firecrackers or Chinese bombs or any other within certain limits, which includes all Chinese temples."<sup>27</sup>

Article 5 provides that "the United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of free migration and emigration of their citizens and subjects from the one country to the other for the purposes of curiosity or trade or as permanent residents." This, however, is the triumph of the American principle and a practical application of the declaration of Congress on July 27, 1868, that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of life, liberty, and the pursuit of happiness."<sup>28</sup> Mr. Brooks says:

To maintain this right we went to war a second time with our mother country (England). We have upheld the same principle in all the courts of Europe and even risked a war with Austria in the Kosta affair. It

<sup>24</sup>"Diplomatic Correspondence," Fortieth Congress, Third Session, 1868-69, Vol. 1, p. 572.

<sup>25</sup>See Article 29, "Treaties and Conventions Since July 4, 1776," 1870-71, p. 154.

<sup>26</sup>"Emigration and Immigration," p. 233.

<sup>27</sup>Order No. 1264, Chapter xl., Section 22. Quoted from B. S. Brooks's "Brief of Legislation and Adjudication Touching the Chinese Question," referred to the Joint Commission of both houses of Congress, 1877, p. 87.

<sup>28</sup>Text, "Statutes at Large," Chapter xv., pp. 223-224, Fortieth Congress, Second Session. For proceedings, see House and Senate Journals and *Congressional Globe*.



was only, therefore, in harmony with our time-honored policy that we should urge this upon China and induce her to recognize the principle that it was the inherent right of every individual to transfer his allegiance at his pleasure.<sup>30</sup>

Article 6 provides that "citizens of the United States visiting or residing in China, and Chinese subjects visiting or residing in the United States, shall enjoy the same privileges, immunities, or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation," this "most favored nation" clause being a reciprocal privilege China has already granted to the American citizens in the preceding treaties.<sup>30</sup> "But nothing herein contained," it continues, "shall be held to confer naturalization upon the citizens of the United States in China nor upon the subjects of China in the United States." This clause was doubtless inserted with an eye to the stringent laws in China against expatriation and with the other eye to the apprehensions on the Pacific Coast of Chinese colonization.<sup>31</sup> Again, though the article refuses to be construed as conferring *per se* naturalization upon Chinese or Americans, it is clear that it was not intended to convey the thought that they cannot be naturalized on account of this stipulation. The exception of naturalization from the "most favored nation" clause was later taken up as a pretext to deny suffrage and naturalization to the Chinese, and a law was formed thereupon to exclude Chinese from this privilege.<sup>32</sup>

Article 7 provides that "citizens of the United States shall enjoy all the privileges of the public educational institutions under the control of the government of China; and, reciprocally, Chinese shall enjoy the same privileges in the United States" which are enjoyed in the respective countries by the citizens or subjects of the most favored nation." The provision of educational privileges was again to the credit of the foresight of the author of the treaty. The best means of assimilation is education. Yet he was not unmindful of the "act" passed by the Legislature of California on April 28, 1860, prohibiting "Mongolians" from attending public schools.<sup>33</sup> Therefore this insertion is very purposeful.

This treaty was barring the way of any restriction legislation until it was modified by the Treaty of 1880, which will be discussed in a later chapter. It may also be said that in this Treaty of 1868 Anson Burlingame performed his mission, while many hold that in it America made a (benevolent) mistake.

<sup>30</sup>"Brief of Legislation," B. S. Brooks, p. 3.

<sup>31</sup>See Article 19 of Treaty of 1844 and Articles 11 and 30 of Treaty of 1858; "Treaties and Conventions Since July 4, 1776," Vol. 2, 1870-71, pp. 136, 148, 154.

<sup>32</sup>"American Diplomacy in the Orient," J. W. Foster, p. 274.

<sup>33</sup>*Congressional Globe*, Forty-First Congress, Second Session, p. 300.

<sup>34</sup>Act of April 28, 1860, Section 8, reproduced in "Brief of Legislation and Adjudication Touching the Chinese Question," B. S. Brooks, p. 27; also "Statutes of California, 1865-66," Chapter cccxlii., p. 398, 1866.

A statement from F. W. Williams seems to give us the gist of the whole question. "The mistake," he says, "in the treaty, to which ensuing years lent an unpleasant emphasis, does not appear to have been the fault of the negotiator on the part of China so much as that of the one on the part of the United States. This was its needless turning into an express stipulation, requiring formal diplomacy and statutes to modify, a privilege which both parties to the contract already enjoyed to their own satisfaction by custom and tacit understanding. Such was the embarrassment Americans brought upon themselves by declaring the right of migration to be inalienable and by promising Chinese subjects in America what they had not themselves asked for—the 'same immunities and exemptions' as we accorded the subjects of all nations. We thus committed ourselves unnecessarily to a principle which in a few years we repudiated most shabbily."<sup>4</sup>

But I still contend that the mistake of America, if it was a mistake at all, was her strict adherence to a right principle; and the fault was not with the negotiator of the treaty on either side, but with the agitator for the abrogation or modification of the treaty. (For full text of sections of treaty, see Appendix A.)

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<sup>4</sup>"Anson Burlingame and First Chinese Mission to Foreign Powers," p. 158.

## CHAPTER III

### TREATY OF 1880; OR, THE MODIFICATION OF THE BURLINGAME TREATY

THE labor conditions in California had been such before the negotiation of the Burlingame Treaty and were so aggravated after it that the éclat with which the Californians joined in hailing the Treaty of 1868 had scarcely had time to die away in the ears of the people before a hue and cry was raised against that treaty as the cause for the depression of labor. As a matter of fact, the workingmen of the whole country were complaining of the business stagnation caused by an overproduction of the manufacturers.<sup>1</sup>

In California there were special reasons for discontent in the competition of the cheap Chinese labor, which reduced the chances of earnings of workingmen, while it strengthened the power and added to the wealth of capitalists. One was the monopolization of land by a few men who, by refusing to utilize it or distribute it at fair prices, kept back from the masses a legitimate opening for work and prosperity. Again, the detestation of country life, for its lack of comfortable accommodations on the farm, made the tramp prefer idling in towns and cities. In San Francisco the mania for stock-gambling created much distress by breaking up the homes of thousands and dissipating the savings of years.<sup>2</sup> All these contributed to making the situation unbearable for the workingmen by reducing wages and increasing unemployment in the cities like San Francisco and Sacramento.

The masses attributed the distress to the competition of the Chinese, who had already monopolized cigar-making, outnumbered the whites in shoe-making, and made themselves preferred in laundry, house service, fruit-canning, farming, and fisheries.<sup>3</sup>

Though not entirely accounted for by the presence of the Chinese, wages had fallen rapidly since 1850 and still had a lowering tendency till 1877. In a list prepared by Mr. B. S. Brooks, comparing the relative wages of the years 1875 and 1876 in one hundred and fifty-four trades in San Francisco, there is seen a decrease of wages in about one hundred and six trades, while only in about forty-two trades the wages remained the same.<sup>4</sup>

Strong hostile feeling again collected on the Pacific Coast. Besides holding meetings against Chinese labor and persecuting the

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<sup>1</sup>"Bancroft's Works," Vol. 37; "Popular Tribunal," Vol. 2, p. 703. <sup>2</sup>*Ibid.*

<sup>3</sup>For main occupations of Chinese in California, see Senate Document No. 137, Fifty-Seventh Congress, First Session, 1902, p. 13.

<sup>4</sup>Appendix C; Appendix to the Opening Statement and Brief of B. S. Brooks on the Chinese Question, pp. 89-94.

Chinese immigrants in their trades and occupations, the laboring classes sought aid by petitioning the Legislature and Congress for redress. Their efforts resulted only in failure because of their want of influence in politics. To be sure, they helped in the election of officials and representatives; but they thought that they were neither adequately represented nor sufficiently protected. They therefore became convinced of the necessity of more organized action to obtain a hearing for their grievances.

Since the policy of the Workingmen's Party in the United States did not square with their object (the former's platform being based on the labor question, the latter's on the coolie evil),<sup>6</sup> therefore they started off, under the leadership of Denis Kearney, to organize a new party, called the Workingmen's Party of California.<sup>6</sup>

In August, 1877, a convention of workingmen was held at Sacramento, in which was adopted as one of the resolutions the abrogation of the Burlingame Treaty.<sup>7</sup> On October 5 one hundred and fifty agitators met to effect a permanent organization of the Workingmen's Party, of which Denis Kearney was chosen President. The Committee on Constitution and By-Laws submitted the principles setting forth the object of the association. Besides proposing to wage war against corrupt government, capitalists, and land monopolists on the one hand and to provide for the poor and unfortunate on the other, they also pledged themselves "to rid the country of cheap Chinese labor as soon as possible by all means in our [their] power."<sup>8</sup> Many of the laws and ordinances passed to discriminate against the Chinese and discourage their coming were declared unconstitutional by the Supreme Court in the light of the existing treaty.

That the workingmen thought that the abrogation of the Burlingame Treaty was the surest and quickest way of redressing their grievances may be inferred from the fact that Denis Kearney directed a strong attack on this point in a speech delivered on the Sandlot on Thanksgiving Day, 1877,<sup>9</sup> and that the workingmen at Oakland sent an address to the President of the United States on December 12 petitioning for the abrogation of the Burlingame Treaty.<sup>10</sup>

~~In 1876 an act was passed by the California Legislature to the effect that~~

An appropriation should be made out of the general fund of San Francisco to be used in defraying the expenses of a delegation of citizens, . . . to be appointed by the mayor, . . . to proceed to Washington, D. C., to solicit such actions on the part of the Federal government as shall modify the Burlingame Treaty so as to prevent the immigration of certain classes of Chinese.<sup>11</sup>

<sup>6</sup>See "Bancroft's Works," "Popular Tribunals," Vol. 2, p. 706.

<sup>7</sup>*Ibid.*, p. 709. <sup>8</sup>*Ibid.*, p. 708. <sup>9</sup>*Ibid.*, pp. 710-711. <sup>10</sup>*Ibid.*, p. 715.

<sup>11</sup>*Ibid.*, p. 720.

<sup>12</sup>"Statutes of California, 1875-76," Chap. devii., Sec. 1. p. 906. Approved April 3, 1876.

In 1877 an act was passed by the same Legislature to the effect of calling upon all the electors to signify at the next State or special election their will as to the continuance or prohibition of Chinese immigration.<sup>12</sup> These instances are given to show the real condition of the agitation at its fountainhead.

A brief history of the movement in Congress for the abrogation or modification of the Burlingame Treaty may be extracted from the report of the Committee on Education and Labor submitted to the House by Mr. Willis, of Kentucky, January 28, 1879, in regard to Chinese immigration :

The State laws which had been enacted having been declared unconstitutional by the Supreme Court, and every other means of relief proving ineffectual, it was finally determined to appeal to Congress. Accordingly, as early as December 22, 1869, at the second session of the Forty-First Congress, an effort was made, but without success, to secure restriction legislation. In the Forty-Second Congress and also in the Forty-Third Congress numerous memorials, resolutions of public meetings, and petitions, one of which numbered over sixteen thousand signatures, were presented to the same effect and with the same result. At the first session of the Forty-Fourth Congress these renewed appeals for relief met for the first time with a favorable response. A joint resolution was introduced and passed calling upon the President of the United States to "open negotiations with the Chinese government for the purpose of modifying the provisions of the treaty between the two countries and restricting the same to commercial purposes."

Subsequently at the same session another joint resolution was passed requesting the President to present to the Chinese government an additional article to the treaty of July 28, 1868, reserving mutually to the two governments the right to regulate, restrict, or prevent immigration to their respective countries. These authoritative requests on the part of Congress failed to secure the desired relief. . . . Recognizing the exigency, the Legislature of California appointed a special committee whose report . . . ably . . . set forth the objections to the Chinese. Subsequent to this a joint committee appointed by the Forty-Fourth Congress collected voluminous testimony upon the same subject and by a majority report urged upon the Executive Department the necessity for an immediate change of the Burlingame Treaty, to the end that such immigration might be restricted or prevented.<sup>13</sup>

In the Forty-Fifth Congress, 1879, a bill passed both houses of Congress to the effect that

No master of any vessel owned in whole or in part by a citizen of the United States or by a citizen of any foreign country, nor other person, shall take on board of such vessel at any port or place within the Chinese Empire or at any foreign port or place whatever any number exceeding fifteen Chinese passengers, whether male or female, with the intent to bring such passengers to the United States, or shall bring such passengers to any number exceeding fifteen on one voyage within the jurisdiction of the United States.<sup>14</sup>

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<sup>12</sup>"Statutes of California, 1877-78," Chap. v., Sec. 1, p. 3. Approved December 21, 1877.

<sup>13</sup>*Congressional Record*, Forty-Fifth Congress, Third Session, December 2, 1878, to February 3, 1879, Vol. 3, Part 1, p. 793.

<sup>14</sup>House Journal, Forty-Fifth Congress, Third Session, 1878-79, Serial No. 1841, p. 608.

The bill was sent to President Hayes for his approval, but was returned with his message of veto. The President took his position in the fact that Chinese immigration was provided for in the stipulations of the Burlingame Treaty. Very clearly he stated that

The second topic which interested the two governments, under the actual conditions of things which prompted the Burlingame Treaty, was adequate protection, under the solemn and definite guarantee of a treaty, of the Chinese already in this country and those who should seek our shores. . . . Its abrogation, were the rest of the treaty left in force, would leave them to such treatment as we should voluntarily accord them by our laws and customs. Any treaty obligation would be wanting to restrain our liberty of action toward them or to measure or sustain the right of the Chinese government to complaint or redress in their behalf.<sup>15</sup>

He also made it clear that, though Congress had authority under the constitution to terminate a treaty, "the power of making new treaties or modifying existing treaties is not lodged by the Constitution in Congress, but in the President, by and with the advice and consent of the Senate."<sup>16</sup> But he made himself understood that he recognized this as an occasion "that may naturally suggest the reconsideration of the subject, as dealt with by the Burlingame Treaty, and may properly become the occasion of more direct and circumspect recognition, in renewed negotiations, of the difficulties surrounding this political and social problem." Then he pledged his attention to their appeal for redress by saying:

I regard the very grave discontent of the people of the Pacific States . . . as deserving the most serious attention by the people of the whole country and a solicitous interest on the part of Congress and the executive.<sup>17</sup>

This message was read in the House March 1, 1879. The immediate action taken by the government was a dispatch from the Department of State (April 23, 1879) to United States Minister G. F. Seward, at Peking, saying:

As it has become evident that the Chinese Ministers now in this country do not possess authority to treat with us in regard to questions growing out of the premises of their people in California, it has become desirable to proceed with negotiations at Peking. You will, therefore, enter upon the discussion so soon as you have reached your post.<sup>18</sup>

The dispatch named the emigration of paupers, criminals, and contract laborers as part of the evil which the United States desired to reduce and suppress, with the coöperation of the Chinese government. It also instructed Mr. Seward to ascertain with precision the disposition of the Chinese government in regard to

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<sup>15</sup>House Journal, Forty-Fifth Congress, Third Session, 1878-79, p. 606.

<sup>16</sup>*Ibid.* <sup>17</sup>*Ibid.*

<sup>18</sup>Senate Document No. 175, Forty-Seventh Congress, First Session, 1881-82, Vol. 6, p. 4.

the whole question of modifying the Burlingame Treaty, that the United States might be in a position to approach it with further representations.<sup>19</sup>

Mr. Seward, with a perfect knowledge of the situation at home and the attitude of the Chinese government toward this question, was tactful enough in the performance of his instructions not to disturb the friendly feeling between the two countries. Consequently he was justified in following the dictates of his discretion more than the tone of his instructions. In his note to Secretary Evarts, July 21, 1879, he says:

I have not felt that my instructions authorized me to lay before them any formal proposals. It has seemed to me that my first object should be to allay their irritation caused by the indications of a more positively hostile policy toward their people in America and to assure them of our devotion to the broadest principles of liberal government and humanity, . . . and more particularly to prepare for an unrestricted discussion of the main question.<sup>20</sup>

The negotiations carried on by Mr. Seward at Peking succeeded in securing the consent of the Chinese government to cooperate with the United States government in so far as to prevent the emigration of four classes of people—namely, criminals, lewd women, diseased persons, and contract laborers.<sup>21</sup> But Prince Kung, Chief Secretary of State of Foreign Affairs, reassured the United States government of the rightful expectation of the Chinese government in regard to the protection of Chinese in America by saying:

In regard to the Chinese who have already gone to the United States, it is presumed that your government will use every exertion to protect them in their treaty rights, to the end that no break may ever arise in the mutual friendship of the two nations.<sup>22</sup>

The prevention of the emigration of certain undesirable classes of people, though stated in the instructions to Mr. Seward as one object of negotiation, was evidently not what the United States government wanted. This is shown by the repudiation of Mr. Seward's propositions by the later-appointed commission, on the ground that "Mr. Seward's propositions in no wise represent the purpose of the United States government."<sup>23</sup> The government was not satisfied with those previous negotiations, and therefore further representations had to be made.

On May 25, 1880, Mr. John F. Swift, of California, and Mr. William Henry Trescot, of South Carolina, were appointed as commissioners to act conjointly with the newly appointed Minister to China, Mr. James B. Angell, to negotiate and conclude a settlement by treaty of such matters of interest to the two governments.<sup>24</sup>

<sup>19</sup>Senate Document No. 175, Forty-Seventh Congress, First Session, 1881-82, Vol. 6, pp. 4-5. <sup>20</sup>*Ibid.*, p. 6. <sup>21</sup>*Ibid.*, pp. 10-11. <sup>22</sup>*Ibid.*, p. 11.

<sup>23</sup>Executive Document, Forty-Seventh Congress, First Session, 1881-82, Vol. 1, "Foreign Relations," p. 176.

<sup>24</sup>Executive Document No. 1, Forty-Sixth Congress, Third Session, 1880-81, Vol. 1, "Foreign Relations," Part 1, p. 302.

The commission arrived in Peking on September 27, 1880. On October 1 the commissioners of both governments met and exchanged their full powers. Then the United States commissioners laid before the Chinese commissioners a memorandum stating the desire of the United States government "to secure such modification of existing treaties as should leave it free to deal with questions growing out of the immigration of Chinese as public interests might demand."<sup>25</sup>

They based their claim upon some facts which, upon close analysis, will be found to have been introduced to serve more as a pretext than as a reason for modifying the existing treaties. First, in the opinion of the American commissioners, there was lack of reciprocity in the treaties between the two countries—*i. e.*, in regard to the extension of privileges to all Chinese subjects throughout the whole territorial integrity of the United States, while the citizens of the United States were entitled only to the limited hospitality of a few open ports in China.<sup>26</sup> Secondly, immigration was understood to be against the policy of the Chinese government, "which does not wish that immigration from China should be assimilated to immigration from other countries."<sup>27</sup> Thirdly, it was claimed that "in a recent treaty with Spain the Chinese government granted to the local authorities of the island of Cuba the right to exercise discretion" in regard to Chinese immigration.<sup>28</sup>

The Chinese commissioners, being well conversant with the actual condition of the discontent and agitations in the United States, submitted a note in response on October 7 which forestalled the purpose of the American commissioners and exposed their pretenses by a presentation of the actual state of affairs in America. They maintained that

In the many years of Chinese emigration to California hundreds of lines of enterprises have arisen. The Chinese have given a large amount of their labor to the American people, and the benefits of that labor to America have certainly not been few. . . . But complaints arise because the Chinese do good work for small remuneration. . . . Formerly, when there was a demand for these laborers, the only fear was that they would not go there; and now, because of competition, there exists a desire that they stay away. . . . A contradiction with the Constitution of the United States cannot be avoided by the policy of restriction. Recognizing the fact that abuses would arise incident upon the increase of Chinese emigration, the Foreign Office consented last year to enter upon negotiations with Mr. Seward to prohibit the four classes of coolie laborers, criminals, prostitutes, and diseased persons from going thither.

The note ends by saying:

Since your excellencies desire to discuss the business further with us, we are ready to discuss further the proposition of Mr. Seward, with the

<sup>25</sup>Executive Document, Forty-Seventh Congress, First Session, 1881-82, Vol. 1, "Foreign Relations," p. 171.

<sup>26</sup>*Ibid.*, p. 172. <sup>27</sup>*Ibid.*, p. 173.

<sup>28</sup>*Ibid.*, p. 173. For reference to the treaty, see Article 12, "Treaty Convention with Spain, November 17, 1877"; Executive Document, Forty-Fifth Congress, Third Session, 1878-79, "Foreign Relations," Vol. 1, p. 100.



hope that an equitable solution may be reached and that the purpose of avoiding difficulties and securing beneficial results may not be lost sight of on either side, provided always that such negotiations shall not be contrary to the stipulations of the Burlingame Treaty."<sup>20</sup>

At a meeting on October 13 the American commissioners took umbrage at the dictum of the Chinese note for saying: "Formerly, when there was a demand for these laborers, the only fear was that they would go not thither; and now, because of the influence of violent men, there exists a desire that they stay away." Again: "But now, because the Chinese do good work for small remuneration, the rabble are making complaint." And again: "If now, because of temporary competition between the Irish and stranger guests, a decision is lightly taken to change the policy of the government, contradiction with the Constitution of the United States and existing treaties cannot be avoided."<sup>20</sup>

The point of diplomatic etiquette which the Chinese commissioners seemed to have violated was pointed out by the American commissioners by saying:

You will certainly recognize that the government of the United States, like the government of China, has the right to appreciate for itself the motives of its own policy, and that when it addresses to the Chinese government a communication upon a subject of grave interest in respectful and friendly language it cannot allow the representatives of China to go behind the communication and either criticize its motives or deny the good faith of its representations.<sup>21</sup>

The answer given by the Chinese commissioners to this charge saved the sensibilities of both parties:

Our remarks in the memorandum were by the way of argument merely and not intended to express any positive opinion of our own. We had heard that the Chinese in California were not in accord with the Irish and came into competition with them. A Minister told us that this fact was at the bottom of the difficulty, and so we mentioned it in our memorandum. But we added also in the memorandum that we did not believe the government was influenced by such motives.<sup>22</sup>

The American commissioners also objected to basing their negotiations upon the propositions submitted by Mr. Seward, because, as they said,

We are entirely unaware of any authority or approval given by the government of the United States to the proposal submitted on his own responsibility by Mr. Seward to the Chinese government.<sup>23</sup>

And:

The government of the United States thinks that it ought to have the right to decide to what extent and under what circumstances that immigration is wholesome and to stop it when it becomes injurious. . . . It therefore asks you to consent to such a modification of what you consider your treaty rights under the Burlingame Treaty as will enable

<sup>20</sup>Executive Document No. 1, Forty-Seventh Congress, First Session, 1881-82, "Foreign Relations," Vol. 1, Part 1, pp. 173-174.

<sup>21</sup>*Ibid.*, p. 175. <sup>22</sup>*Ibid.*, p. 175. <sup>23</sup>*Ibid.*, p. 176. <sup>24</sup>*Ibid.*, p. 176.

it to discharge that duty without raising questions which might disturb the friendly relations of the two countries. . . . What we wish, you refuse in advance—namely, the modification of the Burlingame Treaty. If you can see any way in which we can reach what we wish without a modification of that treaty, we will gladly consider it.<sup>64</sup>

The Chinese commissioners replied :

The propositions of Mr. Seward amounted to a modification of the Burlingame Treaty; for under that treaty all Chinese, good or bad, could at their own will go to the United States, and the officers of neither country could interfere. . . . As it appears now that your government does not approve of Mr. Seward's propositions, we are quite ready to concert measures with you.<sup>65</sup>

Now the way was clear for negotiations, and forthwith a proposition was submitted to the Chinese commissioners for consideration. Briefly stated, the substance of the proposition is as follows :

*Article 1.* China and the United States agree that citizens of their respective countries visiting or residing in the other country for the purpose of trade, travel, teaching, study, or curiosity shall be granted all privileges, immunities, and exemptions as subjects of the most favored nation.

*Article 2.* Whenever the coming of Chinese laborers to the United States shall become injurious to the interests and good order of the country, the government may regulate, limit, suspend, or prohibit it; and the words "Chinese laborers" are hereby used to signify all immigration other than that for teaching, trade, travel, study, and curiosity, hereinbefore referred to.<sup>66</sup>

*Article 3.* Protection, rights, immunities, and exemptions shall be guaranteed to all Chinese already in the United States.

In a memorandum October 22, 1880, the Chinese commissioners replied that the provision of Article 1 was the unnecessary reenactment of certain sections of the existing treaties; that in Article 2 to make the words "Chinese laborers" include all persons except such as go thither for the purpose of teaching, study, travel, and curiosity was not in accord with the spirit of existing treaties and would meet with many difficulties in practical operation; and that the word "regulate" was a general expression referring to the other terms. . . . That China would assuredly find it difficult to adopt the term "prohibit." In this reply they also took occasion to suggest to the American commissioners a limitation, in point of time and numbers, of the emigration of Chinese laborers to the United States.<sup>67</sup>

The American commissioners complied with the first statement made in regard to Article 1, but expressed their fear of a misunderstanding on the part of the Chinese commissioners in proposing for consideration a limitation, in point of time and numbers, of the emigration of Chinese laborers to the United States and said :

The United States did not ask the Chinese government to regulate, limit, suspend, or prohibit immigration, but to leave that to the discretion of the United States government itself.<sup>68</sup>

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<sup>64</sup>Executive Document No. 1, Forty-Seventh Congress, First Session, 1881-82, "Foreign Relations," Vol. 1, Part 1, p. 177.

<sup>65</sup>*Ibid.* <sup>66</sup>*Ibid.*, p. 178. <sup>67</sup>*Ibid.*, p. 178. <sup>68</sup>*Ibid.*, p. 184.

The Chinese commissioners asked if the United States commissioners could give them any idea of the laws which would be passed to carry such power into execution. Mr. Trescot replied, in behalf of the United States commissioners, that this could hardly be done, and that two great nations discussing such a subject must always assume that they will both act in good faith and with due consideration for the interests and friendship of each other.<sup>39</sup>

The Chinese commissioners were thereby persuaded and thereupon unreservedly turned over the welfare of their people into the hands of the United States government with full confidence in the good faith of that great nation.

The Chinese commission submitted a treaty project to the United States commissioners on October 31, which was followed by a counter treaty project from the United States commissioners. After discussions of points of difference, and after the removal of the word "prohibit" from the project, an agreement was reached on November 6, which resulted in the Treaty of 1880, which was, in turn, a modification of the Burlingame Treaty of 1868. (For text of treaty, see Appendix B.)

The treaty was an absolute concession on the part of the Chinese government. As President Arthur afterwards said of it, this treaty was unilateral, not reciprocal, and it was a concession from China to the United States in limitation of the rights she was enjoying under the Burlingame Treaty.<sup>40</sup> The argument that there was lack of reciprocity in the previous treaties suggested by Mr. G. F. Seward in a dispatch to the State Department, March 22, 1878,<sup>41</sup> and actually advanced by the American commissioners<sup>42</sup> was met admirably by the statement from the Chinese commissioners that "citizens of the United States in China have never been relegated to the jurisdiction of Chinese authorities. China has accorded this privilege to the United States."<sup>43</sup> If there was an absence of a grant of like privileges, there certainly was not wanting the equality of concession in the treaties. So we see there was not lack of reciprocity, and hence there was no occasion in that respect for a modification of the existing treaties.

As to grievances incident upon the immigration of Chinese to America, China had just as much right to call for a strict enforcement of the treaty stipulations as the United States had for a modification of them. Did not the Chinese government know that her people were abused, beaten, robbed, slaughtered, and

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<sup>39</sup>Executive Document No. 1, Forty-Seventh Congress, First Session, 1881-82, "Foreign Relations," Vol. 1, Part 1, p. 185.

<sup>40</sup>Senate Journal, Forty-Seventh Congress, First Session, and Special Session, October 10, 1881-82, p. 527.

<sup>41</sup>Executive Document, Forty-Fifth Congress, Third Session, 1878-79, Vol. 1, "Foreign Relations," pp. 130-131.

<sup>42</sup>See p. 29 of this book.

<sup>43</sup>Executive Document No. 1, Forty-Seventh Congress, First Session, 1881-82, Vol. 1, "Foreign Relations," Part 1, p. 174.

butchered in America?<sup>44</sup> The frequent communications with the government of the United States on this subject ought to be enough evidence that she did.

The United States, a government of the people, by the people, and for the people, more often than any other government, could easily be made an echo of the sentiment of the noisy part of its people. Notwithstanding the commissioners' denial and everything said to the contrary, the government of the United States was goaded on to this unpleasant task by the influence of the violent elements, which threatened to disturb the peace and endanger the safety of the country. The indictment, strangely enough, came from the words of one of its own commissioners, who innocently said that the Chinese commissioners must be aware that the subject was one of great popular interest in the United States and had been the theme of excited and even angry comment in Congress; and it was much to be feared that if the commission failed to reach a satisfactory conclusion, the government might be forced by the difficulties of the situation to take the question into its own hands and abrogate the Burlingame Treaty.<sup>45</sup>

This is the truth, but a very sad one. The world might rise and ask: "Was America the only party to the Burlingame Treaty, or did she think that in dealing with China she could also, like other powers, reckon without the host?" China was so solicitous for the friendship of America and so mindful of the good offices of America brought into performance in her behalf that now she even forced a smile toward her at this humiliating demand and said to the United States commissioners that

China did not in any way mistrust the motives and purpose of the United States nor for an instant doubt that the government of the United States would act with entire fairness toward the Chinese. . . . China would never forget that it was the government of the United States, through its representatives abroad, that first called the attention of the government of China to the cruelties to which its subjects were subjected in Cuba and elsewhere. They appreciated fully the spirit in which the United States government had treated the subject.<sup>46</sup>

In concluding this chapter let us be fair enough to say that the United States government did not demand a modification of the treaty primarily on the conviction of the "Chinese evil," and the Chinese government did not concede to a modification of the treaty by reason of the cogency of the American representations; but both were, unhappily, victims of the same fear that the United States government might be forced to abrogate the Burlingame Treaty.

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<sup>44</sup>For such treatment of Chinese, see extracts from San Francisco *Evening Bulletin*, Appendix A, Appendix to the Opening Statement and Brief of B. S. Brooks on the Chinese Question, referred to the Joint Committee of the Senate and House of Representatives, 1877.

<sup>45</sup>Executive Document No. 1, Forty-Seventh Congress, First Session, 1861-62, Vol. 1, "Foreign Relations," Part 1, p. 185.

<sup>46</sup>*Ibid.*, p. 185.

## CHAPTER IV

### RESTRICTION LEGISLATION OF 1882; OR, AN ACT TO ENFORCE TREATY STIPULATIONS RELATING TO THE CHINESE

AN understanding of the main conditions under which the measure originated will help to explain away, to a certain extent at least, the unreasonableness of its birth.

The organized agitation on the Pacific Coast since 1873 and the movement in Congress since 1869 resulted in a modification of the Burlingame Treaty in 1880, whereby the United States government was granted the right reasonably to regulate, limit, and suspend the immigration of Chinese when their coming should endanger the good order of the country.

In the same year the Democratic Party, in a national convention, declared their attitude toward the question of Chinese immigration: that, "their influence being corrupt and corrupting, Chinese should not have lot or part among the American people." The Republican Party, at a convention at Chicago in the same year, adopted a resolution that they would regard the unrestricted immigration of Chinese as an evil of great magnitude and invoke measures to restrain it.<sup>1</sup>

President Garfield, in his letter accepting the Republican nomination for the Presidency, disclosed his opinion about Chinese immigration and thought it the duty of Congress to mitigate the evils and prevent their increase by restriction, in the event the negotiations with China should fail.<sup>2</sup> His administration was sadly brought to an end by an assassin four months after his inauguration. His death could not help but have a disappointing effect on the sanguine hopes of the Pacific States, which were looking to him for restrictive measures on Chinese immigration.

Meanwhile the tide of Chinese immigration was flowing into this country in increased volumes. In 1881 the arrivals were 11,890, against 8,992 in 1880. The year 1882 saw the largest number of arrivals, to the figure of 39,579, leaving a net gain of 29,213, larger than the highest net gain of any previous year, which was 18,258 in 1852.<sup>3</sup>

The Pacific Coast people could not look upon this dispassionately. Consequently we read in the records resolutions and appeals sent to Congress, such as:

Whereas the continued and rapidly increasing influx of Chinese immigration into the ports of San Francisco calls for immediate and emphatic expression of public opinion.<sup>4</sup> . . .

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<sup>1</sup>*Congressional Record*, Forty-Seventh Congress, First Session, March 17 to April 18, 1882, Vol. 13, Part 3, p. 2130.

<sup>2</sup>*Ibid.*, p. 2131.

<sup>3</sup>"Abstract of Reports of Immigration Commission," 1910, Vol. 1, pp. 65-69.

<sup>4</sup>Mass meeting to Hon. J. F. Miller and Hon. J. T. Farley, San Francisco, March, 1882. *Congressional Record*, Forty-Seventh Congress, First Session, Vol. 13, Part 2, p. 1667.

And this:

The time has come when decisive action must be taken to stop the Chinese immigration. A bill will be introduced in the United States Senate in December [1881] by Senator Miller, of California, totally prohibiting Chinese immigration into the United States, and the other California Representatives have promised to support the bill for this purpose.<sup>5</sup>

Accordingly, on December 5, 1881, two bills were introduced in the Senate—~~Senate Bill No. 21, by Mr. Grover, from Oregon, and Senate Bill No. 71, by Mr. Miller, from California.~~<sup>6</sup> Both were read twice and referred to the Committee on Foreign Relations.

On January 26, 1882, Senate Bill No. 71 was reported back unanimously, with an amendment.<sup>7</sup> The substance of the provisions of this bill, entitled "A Bill to Enforce Treaty Stipulations Relating to Chinese," may be briefly stated as follows:

1. Sixty days after passage of this act the coming of Chinese laborers is suspended for twenty years.
2. The master of any vessel bringing any Chinese laborer shall be deemed guilty of a misdemeanor, punishable by a fine of \$500 for each laborer or one year's imprisonment.
3. The two foregoing sections shall not apply to Chinese laborers who were in the United States on November 17, 1880, or who shall have come within sixty days.
4. In case any Chinese residing in the United States on November 17, 1880, or who come within sixty days, shall depart from the United States, they must cause themselves to be registered at the United States Customhouse.
5. Every Chinese of any class entitled by the Treaty of 1880 and this act to come within the United States shall obtain permission of the Chinese government in each case, to be evidenced by a passport of the said government.
6. The Secretary of the Treasury shall cause to be prepared proper books of registration to be kept at the customhouses of the United States.
7. It shall be the duty of the Collector of Customs to issue to Chinese certificates of registration.
8. Any person knowingly making a false statement in the registration of Chinese shall be deemed guilty of perjury; and any person procuring or dealing fraudulently with such certificates shall be deemed guilty of a misdemeanor, punishable by a fine of \$1,000 or five years' imprisonment.
9. The master of the vessel shall prepare a list of Chinese passengers on board and report it to the Collector of Customs at the landing.
10. The Collector shall examine the Chinese passengers before landing.
11. Any vessel whose master shall knowingly violate this act shall be deemed forfeited to the United States.
12. Consular officers shall refuse to certify to the right, and the Collector shall refuse the entry, of persons who come in violation of this act.
13. Any person knowingly helping the landing of any Chinese not authorized by law shall be deemed guilty of a misdemeanor, punishable by a fine of \$100 or one year's imprisonment.

<sup>5</sup>An appeal to working men and women of the United States from the assembly of trades and labor unions, printed in a California paper, the *Call*, February 24, 1882; quoted in *Congressional Record*, p. 1590.

<sup>6</sup>Senate Journal, Forty-Seventh Congress, First Session, and Special Session, 1881-82, pp. 33, 35.

<sup>7</sup>Senate Journal, p. 222, and *Congressional Record*, Vol. 13, Part 1, p. 630.

14. No Chinese shall be permitted to enter the United States without producing the certificate. A violation is punishable by a fine of \$100 or one year's imprisonment.

15. This act shall not apply to diplomatic or other officials of the Chinese government.

In the debate in the Senate the supporters of the measure urged as reasons for restriction the distinct civilization, the unassimilative nature, the low wages and competition with white labor, the low standard of living, the vicious habits, and the degrading influence of the Chinese laborers. It was also charged against them that they sent their money home, they introduced loathsome diseases, they did not bring their families, they were slaves, they were heathen.<sup>8</sup> And these arguments were met with confuting statements from the opposing side.

The reasonableness of the suspension for twenty years was contested. Miller, Bayard, and others maintained that twenty years was entirely reasonable; while Saulsbury, Edmunds, and others would vote for the bill if the period were reduced to ten years. But the whole Senate seemed to align themselves on the question of the justification of the measure from the standpoint of the existing treaties. And we have the following statements to show the difference of opinion in the Senate. I shall quote the supporters first:

Miller, of California: "I believe that the bill as reported does conform in every particular to, and does not contravene in any way, the treaty referred to."<sup>9</sup>

Grover, of Oregon: "The proposed amendment brings the bill within the full meaning of the treaty as understood by our government."<sup>10</sup>

Farley, of California: "Therefore we are not oppressing those people in any way by this proposed legislation; we are simply doing that which the treaty itself provides that we may do."<sup>11</sup>

Garland, of Arkansas: "The bill does not travel one iota beyond the terms and the measure of the treaty."<sup>12</sup>

Slater, of Oregon: "This is drawn in accord with the provisions of the treaty."<sup>13</sup>

Teller, of Colorado: "I shall vote for it because I believe we have the right to pass this bill independently of any question of treaty."<sup>14</sup>

The opposing side maintained that it was in violation of the treaty.

Hoar, of Massachusetts: "This bill seems to me to violate the provisions of the treaty it professes to execute."<sup>15</sup>

Call, of Florida: "If the treaty does not permit the passage of

<sup>8</sup>*Congressional Record*, Forty-Seventh Congress, First Session, February 9 to March 17, 1882, Vol. 13.

<sup>9</sup>*Ibid.*, p. 1481. <sup>10</sup>*Ibid.*, p. 1547. <sup>11</sup>*Ibid.*, p. 1547. <sup>12</sup>*Ibid.*, p. 1585. <sup>13</sup>*Ibid.*, p. 1634. <sup>14</sup>*Ibid.*, p. 1644. <sup>15</sup>*Ibid.*, p. 1517.

such a bill as we desire to pass, then in good faith we should suspend action till we negotiate for a modification of that treaty. . . . It is not in accordance with the spirit and intent of the treaty."<sup>16</sup>

Brown, of Georgia: "Is that keeping faith with the government of China? Is there a Senator here who can say that this is within the spirit of the treaty?"<sup>17</sup>

Dawes, of Massachusetts: "In this bill we do not absolutely prohibit for twenty years any Chinese laborer from coming; we only declare that if he does come he shall go to the penitentiary."<sup>18</sup>

Edmunds, of Vermont: "I do not think that a suspension for twenty years is within the fair spirit of the treaty."<sup>19</sup>

Platt, of Connecticut: "I cannot bring myself to vote for a bill which I believe violates the spirit of the treaty."<sup>20</sup>

Hawley, of Connecticut: "The bill before us is very clearly a harsh and an extravagant interpretation of that treaty."<sup>21</sup>

Morrill, of Vermont: "The question arises in my mind whether this bill is in harmony and good faith with the two treaties that we have made with the empire of China."<sup>22</sup>

Sherman, of Ohio: "I think a suspension for twenty years is in violation of the treaty."<sup>23</sup>

More than fifteen amendments were proposed in the course of discussion in the Senate, but we have space only for a mention of the more important ones.

Senator Grover, of Oregon, proposed an amendment as an additional section to the bill: "That the words 'Chinese laborers,' whenever used in this act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining." This was agreed to by a vote of 25 to 22, 29 not being present.<sup>24</sup>

Senator Farley, of California, proposed an amendment as an additional section to the bill: "That hereafter no State court or court of the United States shall admit Chinese to citizenship, and all laws in conflict with this act are hereby repealed." This was agreed to by a vote of 26 to 22, 28 being absent.<sup>25</sup>

Senator Ingalls, of Kansas, proposed two amendments, the one to strike out "twenty" and insert "ten" in the first section of the bill,<sup>26</sup> which was rejected;<sup>27</sup> the other modified by Senator Brown, to strike out the word "sixty" and insert the word "ninety" in the first section of the bill, was agreed to.<sup>28</sup> Senator Ingalls again offered his first amendment to the first section on March 9, and it was again rejected.<sup>29</sup> On the same day a vote

<sup>16</sup>*Congressional Record*, Forty-Seventh Congress, First Session, February 9 to March 17, 1882, Vol. 13, p. 1640.

<sup>17</sup>*Ibid.*, p. 1642. <sup>18</sup>*Ibid.*, p. 1670. <sup>19</sup>*Ibid.*, p. 1674. <sup>20</sup>*Ibid.*, p. 1702.

<sup>21</sup>*Ibid.*, p. 1739. <sup>22</sup>*Ibid.*, p. 1746. <sup>23</sup>*Ibid.*, p. 1748.

<sup>24</sup>*Congressional Record*, Vol. 13, Part 2, p. 1750, March 9, 1882; proposed February 28, p. 1480.

<sup>25</sup>*Ibid.*, p. 1749; proposed February 28, p. 1481. <sup>26</sup>*Ibid.*, p. 1587.

<sup>27</sup>*Ibid.*, p. 1707. <sup>28</sup>*Ibid.*, p. 1715. <sup>29</sup>*Ibid.*, pp. 1751-1752.



was called for the passage of the bill, and it passed the Senate by a vote of 29 to 15, 32 being absent.<sup>30</sup>

The House of Representatives met on March 14 to consider House Bill No. 3540. On motion of Mr. Page, of California, Senate Bill No. 71 was substituted for the House bill and was immediately taken up from the table and read a first and second time.<sup>31</sup> Mr. Calkins, of Indiana, opened the debate on the bill. The reasons given for the passage of the bill, in the words of Mr. Orth, "are more manifold than cogent." "First, the great influx will endanger our institutions. Secondly, they do not speak our language. Thirdly, they do not wear our kind of clothes. Fourthly, they are pagans. Fifthly, they take no interest in our government. Sixthly, they take their money back to China and thus impoverish the country. Seventhly, when they die their bones are taken back to their native country."<sup>32</sup>

"The opposition to the bill was based upon several grounds," says Mr. Sherman. "First, it is unnecessary; secondly, it is against the policy of our Constitution and laws; thirdly, it goes beyond the power conferred by the treaty; and, fourthly, it will injure us commercially."<sup>33</sup>

Robinson, Tyler, Scranton, Butterworth, Lord, Hawk, Richardson, Dunnell, and others asked for a reduction of the period of suspension to ten years. Page, Willis, Cassidy, Speer, McClure, and others contended that twenty years was not too long. Page and Willis said that the bill was prepared in pursuance of the treaty, and its object was to execute the treaty; while Tyler, Rice, Taylor, Moore, Williams, Butterworth, Kasson, Browne, and others declared that it was a violation of the treaty.

Eleven amendments and one substitute were proposed and rejected in the course of consideration and debate. Of these, one reduced the time to ten and another fifteen years; one limited the immigration to "ten thousand annually"; three proposed substitutes for the word "laborers," such as "coolies," "contract laborers," "slaves," "criminals," "prostitutes," "paupers," and "diseased persons"; one proposed to prohibit only these classes; one provided for transition; one proposed to strike out "within" and insert "before the expiration of" in Section 5; one proposed to strike out Section 11; and another to strike out Section 17.<sup>34</sup>

The bill passed the House on March 23 by a vote of 167 to 66, 59 not voting,<sup>35</sup> and was signed by both houses the next day.<sup>36</sup> Then it was presented to the President for his approval and sig-

<sup>30</sup>*Congressional Record*, Vol. 13, Part 2, p. 1750, March 9, 1882; proposed February 28, p. 1753.

<sup>31</sup>*Ibid.*, p. 1899. <sup>32</sup>*Ibid.*, pp. 2187-2188.

<sup>33</sup>*Ibid.*, Part 3, March 17 to April 18, 1882, p. 2206.

<sup>34</sup>*Ibid.*, pp. 2226-2227. <sup>35</sup>*Ibid.*, p. 2227.

<sup>36</sup>*Senate Journal*, Forty-Seventh Congress, First Session, October 10, 1881-82, p. 473.

nature, and on April 4 it was returned with a veto message from the President.<sup>37</sup> Meanwhile the Chinese Minister at Washington sent to the United States government a memorandum setting forth the reason of the protest in five sections,<sup>38</sup> which the President used very emphatically in vetoing the bill. The objections of the President to the passage of the bill may be briefly stated as follows: It violates the faith of the nation as pledged to China. The act is broader than the recital of the first article of the modified treaty. Prohibition for twenty years is not reasonable suspension. The system of personal registration and passport is undemocratic and hostile to the spirit of American institutions. No provision is made for transit. Finally, he says:

I have said that good faith requires us to suspend the immigration of Chinese laborers for a less period than twenty years; and I now add that good policy points in the same direction. . . . It needs no argument to show that the policy which we now propose to adopt must have a direct tendency to repel Oriental nations from us and to drive their trade and commerce into more friendly lands.<sup>39</sup>

On motion of Senator Farley, the veto message was taken up. Then Senator Sherman said: "In my judgment, and in this I concur in the opinion of the President, there is no occasion for such legislation."<sup>40</sup> Senator Morgan, of Alabama, criticized the President for consulting a foreign power in reference to what Congress was legislating. Then he went on and said: "The Chinese Minister states five objections, and each of these is indorsed by the President of the United States. The argument of the Chinese Minister is worth more against the bill than the great majorities by which it was passed in each House of Congress."<sup>41</sup>

Senator Bayard, from Delaware, objected to the strong, coarse language used by the President as "devoid of courtesy and restraint in phraseology which ought properly to characterize communications between the two great departments of this government."<sup>42</sup> And he added that "the veto message contains not one word of kindly sympathy or feeling for those of our fellow countrymen who cry aloud to us for relief and assistance; . . . and I deny that there has been in the act of Congress the slightest ground to charge the Congress of the United States with a violation of national faith under this treaty by the law which they have passed."<sup>43</sup>

The vote was taken on April 5, and the bill failed to pass over the veto, two-thirds of the Senators present not voting in the affirmative.<sup>44</sup> But this was by no means the end of such legislation.

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<sup>37</sup>*Congressional Record*, Vol. 13, Part 3, p. 2551, and Senate Journal, Forty-Seventh Congress, First Session, October 10, 1881-82, p. 526.

<sup>38</sup>Printed with the document, *Congressional Record*, Vol. 13, Part 3, pp. 2609-2610.

<sup>39</sup>Senate Journal, Forty-Seventh Congress, First Session, October 10, 1881-82, pp. 530-531.

<sup>40</sup>*Congressional Record*, Vol. 13, Part 3, p. 2608.

<sup>41</sup>*Ibid.*, pp. 2611-2612. <sup>42</sup>*Ibid.*, p. 2613. <sup>43</sup>*Ibid.*, p. 2616. <sup>44</sup>*Ibid.*, p. 2617.

On April 6 Senator Farley obtained leave, by unanimous consent, to introduce a bill (Senate Bill No. 1655) "to execute certain treaty stipulations relating to Chinese," which was read twice by title and referred to the Committee on Foreign Relations.<sup>45</sup> In the House Mr. Page introduced a bill (H. R. 5670), Mr. Willis a bill (H. R. 5668), and Mr. Berry a bill (H. R. 5670), all to the effect of restricting Chinese immigration. They were all read twice and referred.<sup>46</sup>

On April 12 Mr. Page, from the Committee on Education and Labor, reported back as a substitute for House Bill No. 5667 a bill (H. R. 5804) "to execute certain treaty stipulations relating to Chinese."<sup>47</sup>

On April 17 the bill was read by its text. Mr. Willis, of Kentucky, presumed by the House to be opposed to the bill, took the floor and stated his objections:

First, under this bill no punishment is prescribed for Chinese who come here or who are here unlawfully. Secondly, because the whole system of registration is cut out. Thirdly, the principal objection to this bill is the ten-year clause.<sup>48</sup>

At the same time I say that if we are compelled to vote for this bill or none, . . . while these people have come appealing to us for bread and ought not to be given a stone, while they have come to us for substantial relief, and this will give them only a shadowy hope, yet I shall vote for it.<sup>49</sup>

In replying to the objections of Mr. Willis, Mr. Page said:

I believe, and I know I speak both my own sentiment and the sentiment of a large portion of that people when I say, that some of the sections included in this bill are far better for our people than the sections contained in the vetoed bill. . . . But my judgment is, we cannot afford to place the President in the position of being compelled to sign or veto a fifteen-year bill after having vetoed a twenty-year bill.<sup>50</sup>

The bill passed the House by a vote of 201 to 37, 51 not voting.<sup>51</sup>

Then the bill was referred to the Committee on Foreign Relations in the Senate, which reported it back to the Senate on April 19, with many amendments.<sup>52</sup> It was taken up for reconsideration on April 25.<sup>53</sup> Some of the more important of the twenty amendments made by the committee are: To strike out "sixty" and insert "ninety" in Sections 1, 3, and 4; to substitute "Chinese laborers" for "Chinese" in four different places in Section 4; to strike out Section 14 and also Section 15. They were all agreed to, except the amendment to Section 14.<sup>54</sup>

But in the course of the discussion Morgan, Slater, Farley, and Grover objected to striking out Section 15. Another vote was called for, and the amendment was rejected.<sup>55</sup>

<sup>45</sup>*Congressional Record*, Vol. 13, Part 3, p. 2639.

<sup>46</sup>*Ibid.*, p. 2678. <sup>47</sup>*Ibid.*, p. 2810. <sup>48</sup>*Ibid.*, p. 2968. <sup>49</sup>*Ibid.*, 2969.

<sup>50</sup>*Ibid.*, p. 2972. <sup>51</sup>*Ibid.*, 2973.

<sup>52</sup>*Ibid.*, Part 4, April 19 to May 17, 1882, p. 3038.

<sup>53</sup>*Ibid.*, p. 3262. <sup>54</sup>*Ibid.*, pp. 3262-3264. <sup>55</sup>*Ibid.*, p. 3411.

The amendments proposed by Edmunds, to limit the use of "Chinese laborers" to persons usually engaged in manual labor and to preserve the existing naturalization laws, so as to admit Chinese persons to citizenship, were both rejected.<sup>56</sup> An additional section to this bill, proposed by Lapham, to the effect that the provision of this act should be open and subject to modification from time to time, was not agreed to. The bill was then read the third time and passed the Senate by a vote of 32 to 15, 29 being absent.<sup>57</sup>

The amendments being all agreed to by the House on May 3, the bill was signed in the Senate the next day, and then was presented to the President of the United States, who approved and signed it on May 6.<sup>58</sup>

Having reviewed the proceedings of this legislation, it becomes us to pause and ask: What was the occasion for all this? In the beginning of this chapter I gave the increased influx of Chinese immigrants as a cause; but that did not seem to be it nor all of it.

In the course of this discussion we have seen that many Representatives endeavored to justify the measure by practically saying: "The Chinese government granted us the right to suspend, therefore we suspend." But, aside from the fact that the mere grant of a right does not necessarily furnish the occasion to exercise that right, a careful perusal of the documents on the negotiations of the treaty and the text of the treaty itself will show that this right was granted on a clearly defined condition—*i. e.*, "when the coming of Chinese laborers to this country endangers the good order of certain localities thereof."<sup>59</sup> This condition was claimed to be fulfilled by the supporters of the measure; but the opponents declared that it was never existent at all.

Then we are obliged to go back to the author of the measure and Representative of the supposedly most grieved State, Mr. Miller, of California, for some light on this question. Very frankly he gave as a strong reason for the adoption of this measure the high-sounding principle of "consistency of policy." For the sake of clearness, I shall quote the following:

A great nation cannot afford inconsistency in action nor betray a vacillating, staggering, inconstant policy in its intercourse with other nations. Can we make a solemn request of China, through the pomp of an extraordinary embassy and the ceremonial of diplomatic negotiation, and with prudent dispatch exchange ratifications of the treaty granting our request, and within less than half a year after such exchange is made cast aside the concession and with childish irresolution ignore the whole proceedings? Can we afford to make such a confession of American imbecility to any Oriental power? The adoption of this or some such measure

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<sup>56</sup>*Congressional Record*, Vol. 13, Part 4, p. 3411.

<sup>57</sup>*Ibid.*, p. 3415, April 28, 1882.

<sup>58</sup>Senate Journal, Forty-Seventh Congress, First Session, and Special Session, October 10, 1881-82, pp. 661, 667, 694.

<sup>59</sup>Section 1 of Treaty of 1880.

becomes necessary, it seems to me, to the intelligent and consistent execution of a policy adopted by this government under the sanction of a treaty with another great nation.<sup>60</sup>

To what extent this afforded a justifiable occasion for such a measure, every fair-minded reader is free to determine for himself.

Granted that China conceded to the United States the right to suspend immigration, that the coming of the Chinese laborers had brought about the fulfillment of the specified condition, and that the principle of consistency in policy demanded execution of treaty stipulations, it is still a question whether the terms of suspension as embodied in the bill are "reasonable"—the twenty years' suspension (finally reduced to ten); the system of passport and registration, the non-naturalization clause, and the comprehensive interpretation of the term "laborers."

A recalling of the negotiations of the treaty will make this clear. Although no specification was made in the treaty, yet the Chinese commissioners, in anticipation of unreasonable legislation, did take occasion to suggest a period of "two, three, or five years." This was also pointed out by President Arthur in his veto message.

As to the equity of the system of passport and registration, we have a statement of President Arthur, who says: "I think it may be doubted whether provisions requiring personal registration and the taking out of passports which are not imposed upon natives can be required of Chinese."<sup>61</sup>

The term "laborers," made to include both skilled and unskilled laborers, was precisely what the Chinese commissioners had objected to in the negotiation of the Treaty of 1880, "because," they said, "the separation of this class from the mass of the subjects of China in this manner is not in strict accord with the spirit of the treaties."<sup>62</sup>

The non-naturalization clause was justly criticized by Senator Ingalls as not belonging to this bill, which proposed to enforce treaty stipulations with China. Though Senator Farley urged it to be based upon the last section of the Burlingame Treaty, yet Senator Ingalls made it clear that that section simply declared that the treaty itself should not be held to confer naturalization and not that they might not be naturalized.<sup>63</sup>

Though the real cause of this legislation, as many historical authorities seem to be of opinion, rested with the demagogue and the politician, yet the aggravating condition that helped it to become a law may not unjustly be ascribed to China herself for her national weakness and her unsophisticated confidence in the good faith of a sister nation, where the good and the sober do not always have the upper hand. Yet America will always have

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<sup>60</sup>*Congressional Record*, Vol. 13, Part 2, p. 1481.

<sup>61</sup>Senate Journal, Forty-Seventh Congress, First Session, p. 530.

<sup>62</sup>*Congressional Record*, Vol. 13, Part 3, p. 2556; memoranda, October 22, 1880. <sup>63</sup>*Ibid.*, Part 2, p. 1746.

good reasons to be proud of her loyal and true sons, who are as frank as they are brave to voice the best sentiment of the great nation.

My opinion receives confirmation from the following quotations. Speaking of those who would compromise on a reduction of the twenty-year period to five or ten, Mr. Joyce says:

I would not vote for it if the time were reduced to one year or even one hour, because I believe the total prohibition of these people from our shores for any length of time, however short, is not only unnecessary and uncalled-for, but that it is a cowardly repudiation, in our dealings with a weak nation, of a just and long-established principle in our government, as well as a bold and open violation of the letter and spirit of our solemn treaty obligations with the people of China.<sup>44</sup>

Mr. Browne, in the same strain, says:

I proceed to inquire, does this bill violate our treaty with the Chinese Empire? This is certainly a most important question. We cannot afford to be both dishonest and unjust. We degrade ourselves in the esteem of the civilized world if we even hesitate to keep our treaty obligations. We ought to keep faith even with the heathen and the idolater. . . . We are too great to do a little thing or a mean one for any cause, much less to secure the end aimed at by this legislation. China—call her heathen if you will—has kept her every treaty obligation with us in the most generous good faith. She never failed and never murmured. . . . In our first treaty of thirty-eight years ago she promised us "a perfect, permanent, and universal peace and a sincere and cordial amity," and she has kept that promise with no Punic faith.<sup>45</sup>

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<sup>44</sup>*Congressional Record*, Vol. 13, Part 3, p. 2185.

<sup>45</sup>*Ibid.*, p. 2178.

## CHAPTER V

### RESTRICTION LEGISLATION OF 1884; OR, AN AMENDATORY ACT TO THE ACT OF 1882

SCARCELY had a month passed after the passage of the act of May 6, 1882, before difficulties sprang up in the way of its operation. The predictions made by the opponents regarding this enactment invariably became true. The defective features of the act, in the light of the various difficulties consequent upon its enforcement, are fourfold:

First, it has no provisions for transit. From May 31 to July 6, 1882, as many as four different railway and steamship companies applied to the Secretary of the Treasury and the Secretary of State for instructions in regard to the transit of subjects of the empire of China across the territory of the United States.<sup>1</sup> The question was thereby referred to Attorney-General B. H. Brewster, who decided on July 18, 1882, that they could not be transported without a violation of the act of Congress of May 6, 1882.<sup>2</sup>

Referring to the unreasonable construction put upon the act, Justice Field and Judge Hoffman both related the same instance, where a Chinese laborer, having taken a ticket by the Overland Railroad from San Francisco to New York by the Central Michigan route, which passes from Detroit to Niagara Falls through Canada, was stopped at Niagara and sent back, as within the prohibition of the act of Congress, and on attempting to retrace his steps was again stopped at Detroit.<sup>3</sup>

Five months after the first decision Attorney-General Brewster, on being requested by the Secretary of State to reconsider the subject, reached a different conclusion by saying: "I do not think that a Chinese laborer coming to this country merely to pass through it can be considered as within the prohibition of the law, he being neither an immigrant nor a laborer coming here as a laborer."<sup>4</sup>

Secondly, it failed to make any provisions for Chinese seamen employed on foreign steamships. When the cases of Ah Sing, the cabin waiter, and Ah Tie and thirteen other Chinese laborers of the crew of the steamship City of Sydney, whom the captain detained on board the ship and refused landing at the port of San Francisco by reason of the prohibitory and punitive provisions of the act of Congress, were brought before the Circuit Court of the United States, Justice Field and Judge Sawyer construed the said act by saying:

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<sup>1</sup>Senate Document No. 62, Forty-Eighth Congress, First Session, Vol. 4, 1883-84, pp. 5, 6, 8, 9.

<sup>2</sup>*Ibid.*, p. 10. <sup>3</sup>*Ibid.*, pp. 20, 29. <sup>4</sup>*Ibid.*, p. 40, December 26, 1882.

The master of a vessel is prohibited from bringing within the United States, and landing or permitting to be landed, any Chinese laborer from any foreign port or place; and that means from bringing any Chinese laborer embarking at a foreign port or place. The prohibition does not apply to the bringing of a laborer already on board the vessel when it touches a foreign port.<sup>5</sup>

Therefore the restraint by the captain was unlawful, and the petitioners had to be discharged.<sup>6</sup>

In the next year (September 29, 1883), when the attention of the Treasury Department was called by the Chinese consul at New York, through the Customs Collector of that port, to the incident that twenty-four Chinese seamen on the British steamer *Pembrokeshire* were "put in irons and closely confined below decks by the master of the steamer" at the port of New York,<sup>7</sup> the Department gave a very indefinite answer:

Whether or not the coming on shore of such seamen for pleasure or business would be contrary to the spirit of the Chinese restriction act, the courts have refused to sanction such landing; and upon the courts, more than upon this Department, devolves the interpretation of the law.<sup>8</sup>

Thirdly, the certificate provision of the act had to be suspended on many occasions. In the case of *Low Yam Chow*, a Chinese merchant, Justice Field and Judge Hoffman decided that the section requiring certificates for Chinese merchants coming to the United States "does not apply to those who resided out of China on the passage of the act of Congress, and that proof of their occupation may be made by parole."<sup>9</sup> And in the case of *Lee Yik*, a Chinese person, Judge R. S. Greene, of the District Court of Seattle, rendered the opinion that the certificate provided by Section 6 was not indispensable to a Chinese person other than a laborer who was about to come to the United States, and he added:

To hold that a Chinese person privileged by the treaty must necessarily be excluded from the country unless he produces one of the certificates mentioned is to put upon him, by the side of citizens and subjects of the most favored nation, an invidious distinction which is certainly not in harmony with the treaty and is certainly, therefore, wide of the true intent of the statute.<sup>10</sup>

Fourthly, there is no provision made for the coming of Chinese from foreign countries. Mr. Rice, Representative from Massachusetts, related that a Chinese from British Hongkong was let into Massachusetts under the decision of Judges Lowell and Nelson that the act of 1882 did not apply to Chinese who were subjects of Great Britain, with whom no supplemental treaty had been made authorizing such action.<sup>11</sup>

These and many others being the obstacles besetting the en-

<sup>5</sup>Senate Document No. 62, Forty-Eighth Congress, First Session, Vol. 4, p. 18.

<sup>6</sup>*Ibid.*, pp. 17-21. <sup>7</sup>*Ibid.*, p. 30. <sup>8</sup>*Ibid.*, p. 63. <sup>9</sup>*Ibid.*, pp. 27, 29.

<sup>10</sup>*Ibid.*, p. 42.

<sup>11</sup>*Congressional Record*, Forty-Eighth Congress, First Session, April 16 to May 16, 1884, Vol. 15, Part 4, p. 3756.



forcement of the act of 1882, we are little surprised at finding that many changes had been made in its interpretation within a year in order to make the act flexible and operative. Consequently we find, in a dispatch from Special Agent J. F. Evans, of the Treasury Department, to W. H. H. Wasson, the constructions given by the courts and the Treasury Department to the law:<sup>13</sup>

1. The courts here [San Francisco] decided that a Chinese crew shipping on an American vessel in the United States and returning on the same vessel were entitled to be landed without producing a certificate, the court holding that, being on an American vessel, they had not been out of the country.

2. The court in another case also decided, in respect of a Chinese crew shipped on a foreign vessel in the United States, that they were entitled to be landed on return without the production of certificates, but requiring open proof that they were the persons so shipped.

3. In the case of a Chinese merchant arriving in the United States from a foreign country other than China, the court held that he was entitled to land upon parole evidence of such facts.

4. The court again decided that a Chinese merchant, direct from China, who had previously been in the United States, could not be required to produce a return certificate under Section 6 of the act, but may be landed on parole evidence produced before the Collector.

5. On October 26, 1882, the Department decided that a Chinese laborer who was in the United States on November 17, 1880, the date of the treaty between the two governments, and who had departed from the United States prior to the passage of the act of May 6, 1882, might be permitted to land upon evidence satisfactory to the Collector of Customs that he was a resident of the United States between the dates mentioned, and directed that the certificate of the Chinese consul, while not conclusive, might be accepted as *prima facie* evidence of that fact.

6. It had also been decided that Chinese travelers, whether laborers or not, might pass through the territory of the United States under such regulations as might be prescribed.

7. It held that a female might be a laborer; that the wife takes the condition of her husband; that a servant is a laborer.

Meanwhile it was rumored that Chinese were being smuggled over the boundary into the United States from the British possessions. Consequently a note was sent from the House of Representatives on August 22, 1882, calling the attention of Mr. Folger, Secretary of the Treasury, to the fact that the Pacific Coast people "have found out that there will probably be a systematic arrangement for introducing Chinese over our northern border and probably over that on the south."<sup>13</sup>

This was followed shortly by a report from a Customs Collector showing the evidence of evasion of law in regard to transit. Writing, in June, 1883, to the Treasury Department, Collector Sullivan submitted a letter from the Surveyor of Customs reporting that, of the nine Chinese who entered New York on February 27, 1882, in transit for China via San Francisco, only five had departed, the remaining four still being in this country.<sup>14</sup>

But the thing that struck most fear in the immigration officers and the Pacific Coast people was the increased number of Chinese

<sup>13</sup>Senate Document No. 62, Vol. 4, pp. 49-50, 1883-84.

<sup>14</sup>*Ibid.*, p. 16. <sup>15</sup>*Ibid.*, p. 55.

that came under the provision of "merchants" or "traders," many of whom the Customs Collectors believed to belong to the class of laborers.<sup>15</sup> An instance of this was given in a letter from the Surveyor of Customs, in which the true character of a so-called "trader" was detected through inquiry. Question (customs officer): "What is your occupation?" Answer (Chinese): "I am a porter in a store." Q. "Have you an interest in the business?" A. "No; I work for a salary." Another would reply: "I deal in fish or matches." Q. "Where is your place of business?" A. "I have none; I peddle them on the street."<sup>16</sup>

Thereupon Collector Sullivan wrote to the Secretary of the Treasury, saying:

The arrival of these numbers of so-styled "traders," "merchants," etc., whose appearance, manners, etc., indicate that they are laborers according to the usual acceptation of the term here, has occasioned considerable comment in the public press, and fears have been expressed that, by the evident neglect of the Chinese authorities in the matter of issuing these certificates, Chinese laborers will obtain admission to the country in great numbers, thus evading or nullifying the law.<sup>17</sup>

In November, 1883, Senator Miller, of California, addressed a letter from the Senate to the Secretary of State, complaining of the coming of several hundred Chinese under the "garb" of "traders" and "merchants" and requesting the officers of the said Department to communicate with the Chinese government on the subject, so that the American government might be "advised as to the course it should pursue in regard to this flagrant violation of its laws and treaty stipulations."<sup>18</sup> He ended with a monstrous charge against the Chinese officials by saying:

The whole difficulty is that in trusting to the honor of China to designate the persons of the permitted classes the United States has been defrauded by Chinese officials who have certificated the laborers as merchants, students, etc.

These were the circumstances that led to the introduction in the House by Mr. Henley, of California, on January 7, 1884, of a bill (H. R. 1798) "to amend an act entitled 'An Act to Execute Certain Treaty Stipulations Relating to Chinese.'"<sup>19</sup>

The bill was reported back, with amendments, by Mr. Lamb, from the Committee on Foreign Relations, March 4, 1884.<sup>20</sup> A resolution was passed on April 22 to consider the bill on Saturday, May 3, 1884.<sup>21</sup>

The amended bill bore slight differences from the original act

<sup>15</sup>Senate Document No. 62, Forty-Eighth Congress, First Session, Vol. 4, p. 65.

<sup>16</sup>*Ibid.*, p. 64, J. M. Morton to Sullivan, October 26, 1883.

<sup>17</sup>*Ibid.*, p. 65, October 30, 1883. <sup>18</sup>*Ibid.*, pp. 68-69.

<sup>19</sup>*Congressional Record*, Forty-Eighth Congress, First Session, December 3, 1883, to February 11, 1884, Vol. 15, Part 1, p. 240.

<sup>20</sup>*Ibid.*, Part 2, February 1 to March 18, 1884, p. 1590.

<sup>21</sup>*Ibid.*, Part 4, April 16 to May 16, p. 3218.

of May 6, 1882, except in point of strictness of provisions. In the first place, it extended the suspension to Chinese from foreign countries; secondly, it made the system of registration more elaborate and the certificate the sole evidence of right of entry; and, thirdly, it made the term "laborer" more comprehensive.

Therefore in the first section of the new act there was inserted in the clause, "it shall not be lawful for any Chinese laborer to come," the phrase "from any foreign port or place." And, on motion of Mr. Hammond, the words "after the expiration of ninety days next" were stricken from this section. Section 2 reads the same as the original, except for the insertion of the words "or attempt to land" between the phrases "land" and "permit to be landed." Section 3 differs only in the last clause, which provides "that Chinese laborers brought on such vessels shall not be permitted to land, except in case of absolute necessity." Section 4 requires in registration, besides the individual's name, age, occupation, and residence, a statement of the family and tribal name and occupation, when and where followed.

Section 6 requires more than the original section of the former act, in that it provides that

If the person applying for a certificate shall be a merchant, the certificate shall state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid; provided, that nothing in this act or in said treaty shall be construed as embracing within the meaning of the word "merchant" hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation. The certificate shall be viséed by the indorsement of the diplomatic representative of the United States at the port of departure, and such certificate shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States.

Sections 8 and 10 read the same as the original sections. Section 11, as amended by the committee by inserting the word "knowingly," reads the same as the original section of the former act. Section 12 omits the phrase "by direction of the President of the United States," in matters of removing Chinese found unlawfully within the United States, and empowers the peace officers to be marshals in reference to carrying out the provisions of the act. Section 13 remains the same. Section 15 makes the provisions of this act applicable to all subjects of China and Chinese, whether subjects of China or any other foreign power. Section 16 provides that the violation of this act or of the act of which this is amendatory shall be deemed a misdemeanor, punishable by a fine of \$1,000 or one year's imprisonment. On motion of Mr. Hammond, an additional section was inserted that this act should not affect the prosecutions or other proceedings, criminal or civil, begun under the act of which this is amendatory.<sup>23</sup> The bill passed the House March 3, 1884, by a vote of 184 to 13, 125 not voting.

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<sup>23</sup>*Congressional Record*, Forty-Eighth Congress, First Session, Vol. 15, Part 4, pp. 3770-3775.

On July 3, 1884, the bill was taken up for consideration in the Senate, where the main difference of opinion was centered upon Section 15 of the bill. Senators Platt and Hoar moved to strike out from the said section the words preceding the word "and"—namely, "That the provisions of this act shall apply to all subjects of China and Chinese, whether subjects of China or any other foreign power." Senators Miller and Farley were opposed to the amendment, and consequently it was rejected. The bill passed the Senate by a vote of 43 to 12, 21 being absent.<sup>23</sup> Then it was presented to the President, who approved and signed it on July 4, 1884.<sup>24</sup>

This bill was claimed in the majority report to have been prepared by the combined Representatives of three States and two Territories, and it was presented for the sole purpose of perfecting the machinery of exclusion already in existence under the act of 1882, which had failed to meet the demands for which it had been called into existence. They showed that the original act had failed to exclude Chinese laborers coming from "any and every port" by referring to the case passed upon by Judges Lowell and Nelson, and that manifold evasions had occurred through the "broad, actual, and possible" interpretations of the words "merchants" and "travelers," together with the notorious capabilities of the lower classes of Chinese for perjury, and had flooded the Federal courts with quasi-criminal cases. Therefore an amendatory act seemed to be the only remedy for this condition.<sup>25</sup>

If the former measure had failed in effecting its end, then the present legislation was perfectly justified. For on what other ground could it base its justification? But the question is, Had it really failed? In the minority report it was clearly stated that "all the evidence is to the effect that the existent act has accomplished that purpose."<sup>26</sup> "Before its enactment Chinese were arriving at San Francisco at the rate of 1,500 a month; but from the time the restriction act went into operation (August 4, 1882, to January 15, 1884) 3,415 Chinese arrived at the port. Of these, 2,024 came on return certificates issued under the law. Of the remaining 1,391, 621 were admitted through the customhouse on proof of former residence and 770 on Chinese passports issued under Section 6 of the act."<sup>27</sup>

Here is the testimony of Collector Sullivan, of San Francisco, to the Treasury Department:

I have endeavored to carry out the law as interpreted by the courts and the Department; and while a few Chinese may have gained admission who

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<sup>23</sup>*Congressional Record*, Forty-Eighth Congress, First Session, Vol. 15, Part 6, June 21 to July 7, 1884, pp. 5937-5938.

<sup>24</sup>*House Journal*, Forty-Eighth Congress, First Session, 1883-84, p. 1756.

<sup>25</sup>*House Report No. 614*, Forty-Eighth Congress, First Session, 1883-84, Vol. 2, p. 2.

<sup>26</sup>*Ibid.*, p. 3. <sup>27</sup>*Ibid.*, p. 3.

were not legally entitled to it, the main object of the law has been accomplished and the influx of Chinese laborers stopped.<sup>28</sup>

In his report to the Treasury Department he stated that the arrivals of Chinese at San Francisco from August 4, 1882, to November 9, 1883, were 2,652, the total departures were 14,086, and the excess of departures over arrivals was 11,434.<sup>29</sup>

As to the ground that it had failed to exclude Chinese laborers from the British possessions, China was not accountable for it; and it would have been as ridiculous as it was unjust to attempt to exclude British subjects by an act framed to execute certain treaty stipulations with China. The United States had treaties with England, France, Spain, Holland, Portugal, Brazil, etc., as well as with China. China could not reasonably be expected to assume the responsibility of consenting, on behalf of Great Britain, to the abrogation of treaties between Great Britain and the United States. If the framers of the act had had as much courage as they had cunning, they would have seen conscientiously that in this case the right quarter to appeal for redress was at John Bull's and not at John Chinaman's.

The evasions caused by the "broad, actual, and possible interpretations" of the words "merchants" and "travelers" can hardly be laid at the door of the justices and judges of this country as abetting the Chinese laborers in evading the law. The law was so harsh and unreasonable that it would compromise the good reputation of this great nation if interpreted without some reference to the existing treaties and to the mutual understanding of terms. If the judicial authorities of this country had made any "broad, actual, and possible interpretations," it was because they could not be made to sacrifice their sense of justice to the public clamor of prejudice. Referring to the prohibition of transit, Justice Field says: "A construction which would justify such a proceeding cannot fail to bring odium upon the act and invite efforts for its repeal. The wisdom of its enactment will be better vindicated by a construction less repellent to our sense of justice and right. All laws should be construed, if possible, so as to avoid an unjust or an absurd conclusion. 'General terms,' said the Supreme Court in a case before it, 'should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence.'"<sup>30</sup> This, it seems to me, instead of being a justification for more strict legislation, was a suitable occasion to call for more humane and just interpretations of the existing act.

The "notorious capabilities of the lower classes of Chinese for perjury" caused other evasions of the law. This is another al-

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<sup>28</sup>Senate Document No. 62, Forty-Eighth Congress, First Session, Vol. 4, 1883-84, p. 60.

<sup>29</sup>*Ibid.*, p. 73. <sup>30</sup>*Ibid.*, p. 21.

leged ground for an amendatory act. It is a difficult task to claim too much truthfulness for the "lower classes of Chinese." But may it not also be possible that their "notorious capabilities for perjury" were overrated? The circumstances were that the Chinese government was made to accept a measure which literally deprived thousands of her people of a rightful livelihood without their consent. The Chinese immigrants must, therefore, choose between earning an honest living in the United States and starvation. Then was brought about the situation which may be characterized by the French proverb of Voltaire: "*Le parjure est une vertu, Lorsque le serment fut un crime.*" ("Perjury was a virtue when the oath was a crime.")

However, we are content to know that the perjury of the Chinese laborers was exaggerated. We have seen that E. L. Sullivan, Customs Collector at San Francisco, testified that "only a few Chinese may have gained admission who were not legally entitled to it." Again, Mr. J. C. Horr, Special Agent of the Treasury Department at Port Townsend, reported to the Treasury Department that, in regard to the reported violations of the act, there was no truth whatever in those rumors.<sup>81</sup>

The answer to the charge that these evasions had filled the courts with quasi-criminal cases may easily be given by quoting Mr. Rice, the Representative from Massachusetts, as saying during the debate on the present act:

Does the gentleman from California [Mr. Henley] want to know how these three hundred cases to which he refers came into the United States courts? It is because you do not acknowledge the validity of a single passport that has been put into the hands of the men who have the right under the treaty to come back by their government, but you arrest and try every one of them before you let them in, when they have a full right under the treaty to come in.<sup>82</sup>

We have been reviewing the main grounds upon which the amendatory legislation has been claimed to be justified. But every one of these grounds disappeared upon close analysis, and the search for the real one still puzzles the students to-day as it did the contemporaries of this legislation. Here we have the minority view of the necessity of the act:

And now, while this rapid return of Chinese [to China] is going on, we are informed by the Secretary of State that the Chinese government notified him that it had temporarily suspended the issue of passports to those Chinese subjects who by right are entitled to come to the States. . . . Under these circumstances can this House be, in the language of the treaty, of the opinion that the coming of Chinese laborers threatens the interests of the country or endangers good order? For these are the circumstances under which legislation to regulate, limit, or suspend their coming is provided for by the treaty. And where is the exigency which

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<sup>81</sup>Senate Document No. 62, Forty-Eighth Congress, First Session, Vol. 4, p. 66.

<sup>82</sup>*Congressional Record*, Forty-Eighth Congress, First Session, Vol. 15, Part 4, p. 3754.

justifies us in disregarding our treaties with all the other nations among whose subjects are to be found persons of the Chinese race?"<sup>33</sup>

Now, we can find the clue to this whole situation only by referring to the cooler sentiment of the times as expressed in the California newspapers. The *Argonaut* of December 1, 1883, says:

It strikes us that our very respectable journals are making more fuss over this business than its importance justifies. Certain of our politicians are making an ado about it that is unseemly and ridiculous. We are not impressed that there is any danger. The law is working as well as we expected it would. Chinese immigration has been practically suspended by it. We are getting no more Chinese now than we ought to have, nor more than are profitable and convenient to keep up the number which, by reason of their existence among us, have become indispensable to us.

In this connection another passage was also quoted by Mr. Rice from the same paper, which says:

Experience and observation demonstrate that there is no depth of absurdity nor height of wickedness to which the daily journals of San Francisco (the *Alta* excepted) will not crawl or climb to conciliate the good will of the ignorant and demagogue element of the labor class. The practice of slobbering over the idle poor and pandering to prejudices that are the growth of ignorance and political demagogism is too common to demand notice, or even to attract it, if, as has happened before, and by the same journals, great damage to the city of San Francisco and the State of California did not result from it. All this blowing of smoke and ashes from out the dead Chinese question is having a damaging influence abroad. It is arresting immigration by sounding a false alarm of a new Chinese invasion.

And very sarcastically it concludes:

If in our country it cannot stand up under the immigration of two hundred moon-eyed barbarians [Chinese] a month who work for their living, obey the law, and don't vote, it had better go out of business and close the concern.<sup>34</sup>

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<sup>33</sup>House Report No. 614, Forty-Eighth Congress, First Session, 1883-84, Vol. 2, p. 5.

<sup>34</sup>Quoted from *Congressional Record*, Forty-Eighth Congress, First Session, Vol. 15, Part 4, p. 3755.

## CHAPTER VI

### RESTRICTION LEGISLATION OF 1888; OR, THE SCOTT ACT

IN the preceding chapter we reviewed the proceedings of the amendatory act of July 5, 1884. This act, in turn, was found unsatisfactory, because its provisions, enacted to remedy the ambiguous and defective features of the original act of May 6, 1882, were themselves ambiguous and defective.

Consequently, six months after its passage (January 14, 1885), because of the lack of statutory provision for Chinese persons resident in foreign countries to prove their status and right as members of the exempted classes, the Secretary of the Treasury issued a circular directing the revenue officers to recognize as lawful certificates those issued by Chinese consular and diplomatic officers, viséed by the United States representative at the port, and those issued by the United States consular officers in the absence of Chinese consular or diplomatic officers. However, as this was not consistent with the supervisory function of the United States consular officer, as prescribed and imposed by the act of Congress, the circular was, in turn, amended on July 13, 1885, by striking out the last clause providing for the issuance of certificates by the United States consuls. And this gave rise to other more serious difficulties.<sup>1</sup>

Meanwhile it was complained that the arrivals of Chinese were rapidly increasing (15,460 total arrivals since the passage of the act, July 5, 1884, to August 1, 1885)<sup>2</sup>; that the courts were clogged with Chinese cases on writs of habeas corpus (seventy-five writs issued in August alone)<sup>3</sup>; that return certificates were found in the hands of wrong persons; that certificates were purchased of brokers in Hongkong, who procured them of the customs officers in the United States (several officers were transferred on the charge of corrupt practice); and, lastly, that this loose and corrupt administration of the law had tended to increase the Chinese population in the United States beyond that of 1882.<sup>4</sup>

The hostile feeling of the Pacific Coast people found undue expression in frequent acts of violence. At Rock Spring, Wyoming Territory, on September 2, 1885, a mob of one hundred and fifty armed men killed twenty-eight Chinese, wounded fifteen, and destroyed their property, estimated to have been worth \$147,748.74.<sup>5</sup> This violent spirit was caught by different localities; and Chinese were driven from Ridding, Bloomfield, Boulder Creek, Eureka,

<sup>1</sup>Senate Executive Document No. 118, Forty-Ninth Congress, First Session, 1885-86, Vol. 7, pp. 1-3.

<sup>2</sup>*Ibid.*, No. 103, p. 3. <sup>3</sup>*Ibid.*, p. 3. <sup>4</sup>*Ibid.*, pp. 3-4.

<sup>5</sup>House Executive Document No. 102, Forty-Ninth Congress, First Session, 1885-86, Vol. 30, p. 4.



and many other places, and their houses were burned and property robbed and destroyed.<sup>6</sup>

Telegrams of urgent appeal came to the office of the Chinese Minister at Washington, who brought the matter to the attention of the United States government, through the Secretary of State, and demanded reparation and protection for the Chinese resident in this country. Secretary Bayard, in his reply three months later (February 18, 1886), warded off those demands by pleading that the perpetrators were foreigners; that every avenue to protection was equally open to the Chinese; that the United States, with all its breadth of territory and the advantages of local self-government by and for the people, was by no means exempt from the disorders to which the struggle for bread gave rise; and that reparation for injuries inflicted by individuals in violation of the law of the land was not among the obligations of the United States government as enjoined by treaty stipulations, because of the existence of the time-honored doctrine of nonliability of the United States of the acts of individuals.<sup>7</sup> But on March 2, 1886, the President of the United States recommended to the benevolent consideration of Congress that, solely from the sentiment of generosity and pity for the innocent and unfortunate, the bounty of the government might be directed in aid of innocent and peaceful strangers whose maltreatment had brought discredit upon this country.<sup>8</sup>

These difficulties had resulted in the introduction of two bills during the Forty-Ninth Congress. House Bill No. 171 was introduced December 21, 1885.

The main features of this bill [as Mr. Cox says in the majority report] which differ from those that have preceded it are as follows: It provides, first, that no Chinese laborer shall have the right to emigrate to the United States for a term of ten years from and after its passage; secondly, it provides for the means of identification by photographic representations of any Chinaman who shall seek to go abroad; thirdly, it prescribes and limits the number of Chinese according to tonnage that may be brought over in any one ship or vessel.<sup>9</sup>

And Senate Bill No. 1991 was introduced March 29, 1886. It corresponds well in its main features with those of the House bill just referred to.<sup>10</sup> It suspends the coming of Chinese laborers for a period of ten years and provides that the terms "Chinese laborers" and "Chinese passengers," wherever used in the act, shall be held to include laborers and persons of the Chinese race, regardless of the government to which they may owe allegiance, or of port, place, or country they may come from; that Chinese

<sup>6</sup>House Executive Document No. 102, Forty-Ninth Congress, First Session, Vol. 30, pp. 57-61.

<sup>7</sup>*Ibid.*, pp. 61ff. <sup>8</sup>*Ibid.*, pp. 1-3.

<sup>9</sup>House Report No. 2043, Forty-Ninth Congress, First Session, 1885-86, p. 2.

<sup>10</sup>*Congressional Record*, Forty-Ninth Congress, First Session, Vol. 17, Part 5, pp. 4958ff, 5109ff.

other than laborers, as well as laborers, departing from the United States with the intention of returning shall be registered by photographic representation; and that no master of any vessel shall take on board and bring to the United States any number of Chinese persons exceeding one passenger to every fifty tons of the registered tonnage of the vessel.

In the month of February, 1886, three bills (Senate Bill No. 1483 and House Bills Nos. 5565 and 5567) were introduced in both houses by Senator Mitchell, of Oregon, and Representatives Henley and Felton, of California, to the effect of abrogating the treaties with China. The title of the Senate bill (No. 1483) gives a clear idea about the prevailing sentiment on the Pacific Coast:

A bill abrogating all treaties heretofore made and now operative between the United States government and the Chinese Empire in so far as they, or any of them, provide for, recognize, or permit the coming of Chinese to the United States, and in so far as they, or any of them, inhibit the United States from absolutely prohibiting the coming of the Chinese to the United States, and repealing all acts of Congress in so far as they, or any of them, recognize or permit the coming of Chinese to the United States, and absolutely prohibiting the coming of Chinese to the United States, excepting only diplomatic, consular, and other officers, and prohibiting the landing of any Chinese therein, excepting only such diplomatic and other officers.<sup>11</sup>

The agitation for abrogating treaties with China, the pending measures of restriction in Congress, the maltreatment of Chinese by murdering, robbing, and burning, and the indifference of the United States government to the protestations of the Chinese government for justice and protection precipitated expedient action on the part of China to relieve the strain of the condition. In August, 1886, the Chinese government approached the Minister of the United States at Peking with the proposition of prohibiting, of her own accord, the emigration of Chinese laborers into the United States, "so that no Chinese laborers will be permitted to go to the United States, nor any Chinese laborer who has returned to China from the United States, if he has no family or relations, money or property there, will be allowed to go back thither, in order that the Chinese laborers who remain in the United States may gradually be reduced in number, the causes of danger be averted, and lives preserved." The same communication was also sent to the British Minister in Peking, to the end that the cooperation of the British government might be secured in enforcing the restrictive regulations in the port of Hongkong.<sup>12</sup>

The proposition was finally reduced to a more definite form and communicated to Minister Denby at Peking on January 12, 1887,<sup>13</sup> undertaking "to establish a system of prohibition, that those laborers who have not been to the United States will be

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<sup>11</sup>Senate Journal, Forty-Ninth Congress, First Session, p. 280.

<sup>12</sup>House Executive Document, Fiftieth Congress, Second Session, 1888-89, Vol. 1, "Foreign Relations," pp. 357, 366, 370. <sup>13</sup>*Ibid.*, p. 362.

strictly prohibited from going thither; nor will any Chinese laborer who has returned to China from the United States, where he has no property or family, be allowed to go back thither to run the risk of treading on the ground of danger. But, with regard to the Chinese laborers now remaining in the United States and that class of Chinese entitled by treaty to come and go of their own free will and accord, it is hoped that they will forever be treated according to treaty stipulations."<sup>14</sup> It was also suggested in the communication that a certain course of issuing certificates to merchants should be adopted by the United States government, that the Chinese merchants might be apprised of the right way of proceeding, and that free transit should be permitted to passengers.

On being advised of the disposition of the Chinese government, the State Department on the same day (January 12, 1887) submitted a treaty project to the Chinese Minister at Washington which provided for the absolute prohibition of Chinese laborers for thirty years and requested the Chinese Minister to give his approval. The Chinese Minister replied that he was under instructions from the Foreign Office of the Chinese government not to enter into negotiations for a treaty until the pending cases of indemnification were settled.<sup>15</sup>

On March 18, 1887, the Chinese Minister, in conformity with instructions from the Foreign Office, drafted and submitted to Secretary Bayard a detailed treaty proposition in regard to the proposed restriction and prohibition of the coming of Chinese laborers into the United States and the proper protection of the Chinese that were already in this country. In this memorandum he held that, by Article 3 of the Treaty of 1880, Chinese in the United States were entitled to enjoy completely the rights and privileges of protection as citizens or subjects of the most favored nation; yet they were outraged, murdered, and burned to death by mobs at Rock Spring and other places. He thanked the United States government for suppressing the riots and for passing a bill of indemnity to relieve the suffering of the innocent Chinese; ~~but he protested that no justice had yet been done or given on account of the Chinese who were murdered.~~ The perpetrators had no sooner been arrested than they were released, a practice hardly claiming to have the deterring effect of justice. The Chinese government, no longer able to bear with the ill manner in which its subjects were treated, and with a view to averting any possible cause of jeopardizing the friendly relations of the two countries, on August 3, 1886, wrote to Mr. Denby, the United States Minister in China, of her intention to prohibit, of her own accord, the laboring class from emigrating to the United States and to request, through the British Minister, the coöperation of the British government at Hongkong in this measure.

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<sup>14</sup>House Executive Document, Fiftieth Congress, Second Session, 1888-89, Vol. 1, "Foreign Relations," p. 362. <sup>15</sup>*Ibid.*, p. 363.

Next, he set forth fifteen propositions, seven of which (Nos. 1, 2, 3, 4, 5, 6, and 13) were relative to restriction of the Chinese laborers, five (Nos. 7, 8, 9, 10, and 11) to proper protection of Chinese in the United States, one to indemnity, one to extradition, and the remaining one to import duty. The seven propositions for restriction were substantially the same as those stipulated in the communication from the Foreign Office to Minister Denby on January 12, 1887, but under the head of "Protection":

No. 7 desires the President to proclaim that any person who may commit acts of murder, arson, and robbery against the Chinese shall be severely punished without the least leniency.

No. 8 desires that a marshal and other officers be appointed where the Chinese are settled to protect them by arresting those who should plot injuries against them.

No. 9 suggests that instructions be given to the military and civil local authorities to take precautionary measures in case of feeling of discord between the Chinese and other laboring classes, that riots may not break out.

No. 10 suggests that hereafter if any persons, acting in concert, are guilty of assailing and killing Chinese with firearms, they shall be punished by hanging, as a warning to others.

No. 11 desires that persons guilty of simple expulsion of Chinese by force be punished according to their relative guilt as leaders or followers.<sup>16</sup>

On April 11, 1887, Secretary Bayard transmitted to the Chinese Minister at Washington a draft of a convention embodying the suggested provisions relative to the subject of immigration in four articles: Article 1 provides for absolute prohibition of the coming of Chinese laborers for twenty years; Article 2 provides that the preceding article shall not apply to the return of any Chinese subject who has a lawful wife, child, or parent in the United States, or property or debts amounting to \$1,000; Article 3 provides that this convention shall not affect the right of Chinese officers, teachers, students, merchants, or travelers, and it also provides for free transit for Chinese laborers; Article 4 provides that this convention shall remain in force for twenty years after exchange of ratifications and shall remain in force for a like period, unless notification of its termination is given by either government six months before the expiration of the first period.<sup>17</sup>

As to the suggested system of protection of Chinese, Secretary Bayard contended that it was at variance with the constitutional principles of the American government, and therefore the Department found itself unable to formulate any counter proposition. Those measures proposed in the Chinese memorandum were substantially what the Chinese government employed for the protection of Americans in China; and in demanding this of the United States government Mr. Bayard thought that China had practically called upon the United States "to revolutionize its institutions."<sup>18</sup>

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<sup>16</sup>House Executive Document, Fiftieth Congress, Second Session, 1888-89, Vol. 1, "Foreign Relations," pp. 366-370. <sup>17</sup>*Ibid.*, pp. 371-372. <sup>18</sup>*Ibid.*, p. 374.

In his reply of August 16, 1887, the Chinese Minister pointed out the omission of all provisions for the protection of Chinese in the draft of the convention and suggested two additional articles to be drafted, one respecting the protection of Chinese laborers and the other respecting the indemnity to be granted for the injuries sustained by the Chinese laborers through mob violence.

In a note of December 28, 1887, Secretary Bayard sent another copy of the treaty project to the Chinese Minister, identical with the one sent on April 11, and requested him to proceed to an agreement on the convention. To this the Chinese Minister replied that he had on August 16 sent to the Department a memorandum note containing a detailed reply to the draft of the treaty, with a proposition for two additional articles which he regarded as essential to the acceptance of the Chinese government,<sup>19</sup> that it was inexplicable that there was not even an allusion to the memorandum under reply, and that a mutual agreement could be hoped for only when there were included in the treaty provisions for protection and claims for indemnity.

As a result of an interview in the State Department on February 29, 1888, three additional articles, numbered A, B, C, were agreed upon, which were inserted in the convention as Articles 4, 5, and 6. Article A provides that Chinese laborers or Chinese of any other class residing in the United States shall have for the protection of their persons and property all rights of process that are given by the laws of the United States to citizens of the "most favored nation." Article B provides that the United States, without reference to liability, agrees to pay the sum of — dollars (afterwards fixed at \$276,619.75) as full indemnity for all losses and injuries sustained by the Chinese subjects. Article C provides that the Chinese government should make an arrangement with the British government to prevent the coming of Chinese laborers into the United States from Hongkong by way of British Columbia.<sup>20</sup>

The treaty, as further amended at a personal conference between Secretary Bayard and Minister Chang Yen Hoon, stands substantially as follows:

*Article 1.* The absolute prohibition of the coming of Chinese laborers for a period of twenty years.

*Article 2.* The preceding article not applicable to the return of a Chinese laborer who has a lawful wife, child, or parent in the United States, or property or debts amounting to the value of \$1,000, and such right to be exercised within one year from date of departure from the United States.

*Article 3.* The provisions of this convention not to affect the right at present enjoyed by Chinese subjects, being officials, teachers, students, merchants, or travelers for curiosity or pleasure, of coming to or residing in the United States.

*Article 4.* Chinese laborers or Chinese of any other class residing in the United States to have the protection of their persons and property,

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<sup>19</sup>House Executive Document, Fiftieth Congress, Second Session, 1888-89, Vol. 1, "Foreign Relations," p. 383. <sup>20</sup>*Ibid.*, p. 389.

all rights that are given by the laws of the United States to citizens of the "most favored nation," except the right to become naturalized citizens.

*Article 5.* The United States, without reference to the question of liability, to pay the sum of \$276,619.75 as full indemnity for all losses and injuries sustained by the Chinese.

*Article 6.* This convention to remain in force for a period of twenty years after exchange of ratifications, and to remain in full force for another period of twenty years, unless notification of its termination is given by either government six months before the expiration of the first period.<sup>21</sup>

Then the treaty was signed by the representatives plenipotentiary of the two governments at Washington on March 12, 1888, under the direction of the President of the United States. Four days afterwards the President transmitted the signed convention to the Senate for its approval. On May 8, 1888, Secretary Bayard notified the Chinese Minister of the approval of the treaty by the Senate, with two amendments—namely: To the first article of the treaty was added the clause, "And this prohibition shall extend to the return of Chinese laborers who are not now in the United States, whether holding return certificates under existing laws or not." And to Article 2 was added the clause: "And no such Chinese laborer shall be permitted to enter the United States by land or sea without producing to the proper officer of customs the return certificate herein required."<sup>22</sup>

In communicating these amendments to the Chinese Minister, Secretary Bayard said that, on examination, he did not discover that the provisions of the original treaty were in any degree altered thereby. And, in reply, the Chinese Minister gladly accepted them in due form, "as they do not alter the terms of the original treaty."<sup>23</sup>

The Chinese Minister had sent the original treaty to the Foreign Office for examination three days after it was signed in Washington; and now, on May 12, 1888, he telegraphed to the same office the amendments, awaiting notification from his government about the ratification of the treaty.<sup>24</sup>

While giving their approval to the amendments to the treaty as made by the Senate, the people of the Pacific Coast did not hesitate to express their anxiety that the urgency for a measure to carry out the provisions of the treaty would very likely be overlooked by Congress. Here is an extract from a San Francisco newspaper:<sup>25</sup>

Whatever value the amendment [first amendment made by Senate] may have had when it was adopted is lost in the fact that the greater part of the Chinese then in China will be in the United States before a law can be enforced carrying out the conditions of the treaty.<sup>26</sup>

Therefore, pending the ratification of the treaty, a bill (Senate Bill No. 3304) was reported in the Senate by Senator Dolph, of

<sup>21</sup>House Executive Document, Fiftieth Congress, Second Session, 1888-89, Vol. 1, "Foreign Relations," pp. 393-394. <sup>22</sup>*Ibid.*, pp. 396ff. <sup>23</sup>*Ibid.*, p. 400. <sup>24</sup>*Ibid.*, pp. 400-401. <sup>25</sup>*Morning Call*, July 13, 1888.

<sup>26</sup>Reproduced in *Congressional Record*, Fiftieth Congress, First Session, 1888, Vol. 19, Part 7, p. 6569.

Oregon, from the Committee on Foreign Relations, on July 11, 1888, with a speech, saying:

In order to provide the necessary regulations for executing the provisions of the treaty, it is important that an act should be passed to take effect when the treaty goes into operation.<sup>28</sup>

The text of the act was substantially the embodiment of the provisions of the new treaty and of the important sections of the former restrictive acts, with the exception of Section 15, which provides that the former acts of restriction, enacted May 6, 1882, and amended July 5, 1884, are hereby repealed.<sup>29</sup>

In the Senate debate Senator Mitchell, of Oregon, though willing to vote for the bill, yet criticized the treaty which this bill proposed to enforce as inadequate to meet the expectations of the legislators of this country and called it "a sham, a fraud, a deception."<sup>30</sup> Senator Morgan, of Alabama, thought it was too harsh in some of its provisions and doubted that "any government in the world which had much self-respect would ratify it."<sup>30</sup> Then the debate took a partisan turn. The Democrats charged the Republicans with being responsible for the introduction of Chinese into this country, and the Republicans denounced the Democrats for not having originated any good and efficient measures to restrict Chinese immigration. On August 8, 1888, the bill passed the Senate.

Consideration of the bill in the House took place ten days later. Mr. McCreary, of Kentucky, and Mr. Hooker, of Mississippi, both wished that the Senate had ratified the treaty without amendments, which, being unimportant, immaterial, and unnecessary, had caused the delay in the ratification of it by the Chinese government. But Mr. Hitt, from Illinois, contended that those amendments were well thought out and wise and served to stop "great holes in this treaty," and there could be no doubt about the assent of China.<sup>31</sup> The bill passed the House on August 20, 1888. Then it was presented to the President, who approved and signed it on September 13.<sup>32</sup>

Meanwhile there had been rumors that China had rejected the treaty. Several inquiries were made by Congress of the State Department to ascertain the facts on the subject; but up to Saturday, September 1, 1888, the State Department replied that they had no information whatever on the subject and believed that if the treaty had been rejected by China they would have received a cablegram from the American Minister in China.<sup>33</sup> On Sunday morning, September 2, a London dispatch was printed in the newspapers stating that China had rejected the treaty; and on Mon-

<sup>28</sup>*Congressional Record*, Fiftieth Congress, First Session, Vol. 19, Part 7, p. 6569. <sup>29</sup>*Ibid.*, p. 7693. <sup>30</sup>*Ibid.*, p. 6570. <sup>30</sup>*Ibid.*, p. 6573. <sup>31</sup>*Ibid.*, p. 7747.

<sup>32</sup>Senate Journal, Fiftieth Congress, First Session, 1887-88, p. 1432.

<sup>33</sup>*Congressional Record*, Fiftieth Congress, First Session, 1888, Vol. 19, Part 8, p. 8216.

day, September 3, Mr. Scott, of Pennsylvania, introduced the following bill (H. R. 11336):

*Section 1.* *Be it enacted, etc.,* That from and after the passage of this act it shall be unlawful for any Chinese laborer who shall at any time heretofore have been, or may now or hereafter be, a resident within the United States, and who shall have departed or shall depart therefrom and shall not have returned before the passage of this act, to return to or remain in the United States.

*Section 2.* That no certificates of identity, provided for in the fourth and fifth sections of the act (May 6, 1882) to which this is a supplement, shall hereafter be issued; and every certificate heretofore issued in pursuance thereof is hereby declared void and of no effect, and the Chinese laborer claiming admission by virtue thereof shall not be permitted to enter the United States.

*Section 3.* That all the duties prescribed, liabilities and forfeitures imposed, and the powers conferred by the second, tenth, eleventh, and twelfth sections of the act (May 6, 1882) to which this is a supplement, are hereby extended and made applicable to the provisions of this act.

*Section 4.* That all such part or parts of the act (May 6, 1882) to which this is a supplement as are inconsistent herewith are hereby repealed.<sup>54</sup>

Mr. Jackson, of Tennessee, asked what was the purpose of this legislation, since a general act on this subject had just been passed. Mr. Scott answered by saying that "it merely proposes, under certain conditions, to prohibit Chinese laborers from coming into the United States. And if the treaty recently negotiated has been rejected by the Chinese government, then this bill is essential and is the only possible way by which Chinese laborers can be kept out of the United States."<sup>55</sup> The bill passed the House that day without much debate.

When the bill was taken up for consideration in the Senate, the whole body of Senators seemed to concur in the opinion that strict measures of restriction were needed in regard to the immigration of Chinese laborers. But some did express their doubt as to whether this act could be justified, in view of the pending treaty, which was negotiated by the government of the United States and approved and ratified by the Senate.

~~The proponents of the bill based their support of the measure on the ground that China had rejected the treaty; and, moreover, a nation had absolute right to say who should and who should not come into it. Senator Teller, of Colorado, said that he was delighted to learn from the newspaper reports, by way of London, that the Chinese government had rejected the treaty, because he was in favor of legislating upon this subject without reference to treaties.<sup>56</sup>~~

Senator Sherman, of Ohio, supposed that, as a matter of course, the House of Representatives, where the bill originated, must have information as to China's rejection of the treaty which the Senate did not possess. Therefore he would vote for this measure on that supposition. But he added: "If it turns out that there

<sup>54</sup>*Congressional Record*, Vol. 19, Part 8, p. 8226.

<sup>55</sup>*Ibid.*, p. 8226. <sup>56</sup>*Ibid.*, p. 8216.



is a mistake made, I want it distinctly understood that the blame rests not here with the Senate, but with the House of Representatives." He further advised a little delay in the proceeding, so that more definite information might be ascertained and that the United States Congress might be spared from rushing "pell-mell, like a herd of buffaloes at the fire of a single shot, by some rumor that may prove to be false."<sup>37</sup>

On September 7, 1888, two telegraph messages from the American Minister in Peking were transmitted to the Senate by the President of the United States:

*Bayard, Washington:* Believe treaty has been rejected. Have demanded Foreign Office positive information some days since. No information has yet been received. DENBY.

PEKING, September 6, 1888.

*Bayard, Washington:* Treaty postponed for further discussion.

DENBY.

PEKING, September 6, 1888.<sup>38</sup>

The bill passed the Senate that day by a vote of 37 to 3, 36 being absent. The motion to reconsider the vote on the passage of the bill was taken up on September 10, 11, and 13. A vote was taken on September 14, the result being 18 to 17, absent 41, a quorum not having voted. Another vote was taken on September 17 and resulted in the rejection of the motion by a vote of 20 to 21, 35 being absent.<sup>39</sup>

The bill was returned to the House the same day that it passed the Senate. Therefore the order given by the Committee on Foreign Relations to the President of the Senate directing him to withhold the transmission of the bill to the Lower House was of no avail. (The order was at first tabled on September 19 and taken up the next day, when it was found inapplicable.)<sup>40</sup>

Meanwhile the Foreign Office, on September 17, sent five of its Ministers to the American Legation to interview Mr. Denby, asking him whether Congress had passed a bill absolutely prohibiting all Chinese from the United States and assuring him that China had not refused to ratify the treaty, but was only considering the question.<sup>41</sup>

On receiving a telegram from the State Department on September 19, Minister Denby communicated to the Chinese government the passing of the bill by Congress, with the request that China should immediately ratify the treaty; and he would consider the ratification as having been refused if no notice from the Chinese government was forthcoming within forty-eight hours.<sup>42</sup>

The next day the Foreign Office submitted to Mr. Denby a

<sup>37</sup>*Congressional Record*, Vol. 19, Part 8, pp. 8217, 8329.

<sup>38</sup>See House Executive Document, Fiftieth Congress, Second Session, Vol. 1, "Foreign Relations," Part 1, p. 350, and *Congressional Record*, *ibid.*, p. 8365. <sup>39</sup>*Ibid.*, pp. 8369, 8601, 8647. <sup>40</sup>*Ibid.*, pp. 8718, 8755.

<sup>41</sup>House Executive Document, Fiftieth Congress, Second Session, 1888, Vol. 1, "Foreign Relations," Part 1, p. 351. <sup>42</sup>*Ibid.*, p. 353.

memorandum which they had prepared since the interview on September 17. In this memorandum they stated that in the treaty, although the purposes and intent of the contracting parties were, in general, identical, still the people outside (Chinese people) were very much displeased with it and suggested three points for further consideration—namely: (1) In regard to reducing the period of twenty years. (2) To provide for the return of Chinese laborers who had property in the United States by issuing certificates, to be secured on presenting to the Chinese consul a petition embodying the circumstances. (3) To provide for the return of Chinese laborers owning property valued at less than \$1,000.

Minister Denby regarded this action as amounting simply to a rejection of the treaty and refused to discuss any changes of the treaty.<sup>43</sup>

On September 25, 1888, the Chinese Minister sent a cablegram from Lima, Peru, to the State Department, through the Acting Chinese Minister at Washington, embodying the same propositions for changes in the treaty.<sup>44</sup> Then the bill, which was presented to the President of the United States on September 21, was signed on October 1, 1888, and was returned to Congress with a message from the President.

In his message President Cleveland contended that the inoperative and inefficient condition of the former treaty and law had produced an increasing discontent among the people, especially on the Pacific Coast. The necessity of remedy was fully appreciated by the Chinese government, which proposed to prohibit the emigration of Chinese laborers of her own accord. A well-formulated convention had resulted from the deliberate negotiations, in which the United States government exhibited much acquiescence in meeting the requests of the Chinese government. In Article 1 of the treaty the thirty-year term was reduced to twenty, and Article 2 was wholly of Chinese origination. But in the fact that the Chinese government refused to ratify the treaty unless further discussion should be had on certain proposed changes she had practically abandoned the objects of the negotiation and denied the United States the cooperation she had been led to rely upon. From this unexpected and disappointing refusal an emergency arose in which the government of the United States was called upon to act in self-defense by the exercise of its legislative power. President Cleveland urged that justice and fairness seemed to require that some provision should be made for the Chinese laborers already on their way back to the United States before the passage of the act. He also recommended that, without acknowledging legal liability, but in a spirit of humanity befitting the nation, the amount of indemnity as named in the treaty should be appropriated to indemnify those Chinese who had

<sup>43</sup>House Executive Document, Fiftieth Congress, Second Session, 1888, Vol. 1, "Foreign Relations," Part 1, p. 355. <sup>44</sup>*Ibid.*, p. 403.

sustained losses and injuries through mob violence in the United States.<sup>45</sup>

As we have seen through this lengthy review, the occasion for the Scott act was the rejection of the treaty by the Chinese government, as reported in the newspapers. Shortly afterwards official information was received that China had not refused to ratify it, but held it for further deliberation. Then the apparent justification of the act was found in China's postponing for further discussion the ratification of the treaty which her delegated Minister had approved and signed. But if we study carefully the amendments made by the Senate and realize to what extent they had changed the nature of the treaty, which had been concluded, approved, and signed by the Secretary of State, the representative plenipotentiary of the United States, it seems hard to have denied to the Chinese government this right of improving upon what its Minister had concluded. The two amendments made by the Senate, although declared as not altering the original terms of the treaty, contained more import than what both Secretary Bayard and Minister Chang Yen Hoon comprehended at a glance.

According to the opinion of one of the admirers of the amendments (Mr. Hitt, from Illinois) :

While the first article of the treaty seemed to prohibit the coming of Chinese laborers, it did not touch the question as to the right of return of those Chinese not now in the United States, but holding certificates that entitle them to return. The courts might hold that, according to the terms of the existing treaty, they should be considered outstanding obligations on the part of this country. Then the whole flood of these certificated Chinese would again pour in; and the amendment was added to the treaty that none should enter even if holding return certificates. The second article of the treaty specifies the exceptions of Chinese laborers who may come back on certificates and who have family relations and property. But under the principles recognized by our courts a Chinaman who pretended that he had lost his certificate would be allowed to prove by ordinary means or oral evidence his right of entry, even if he had no certificate in hand. The amendment made the certificate the sole evidence in the case for the admission of these excepted Chinese laborers. It is a severe provision, but justified by public interest and the certainty of false testimony if it is allowed.<sup>46</sup>

Now we can realize to some extent the hardship on the Chinese laborer who, having wife or child or parent or property in the United States, has lost his certificate by some accident of fire, water, or robbery during his passage across the ocean; while there were at least twenty thousand certificate holders, both in China and on the way back to the United States, whose right of entry was turned into scraps of waste paper.

Moreover, if the United States was sincere in her desire for the ratification of the treaty negotiated to remedy some unfavorable

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<sup>45</sup>House Executive Document, Fiftieth Congress, Second Session, 1888-89, Vol. 1, "Foreign Relations," Part 1, pp. 356-359.

<sup>46</sup>*Congressional Record*, Fiftieth Congress, First Session, Vol. 19, Part 8, p. 7747.

conditions in this country caused by the presence of Chinese laborers, then the logical consequence following the rejection or postponement of the treaty by China should have been the peremptory right of the United States to proclaim the bill embodying the provisions of the treaty, which had passed both houses and received the signature of the President on September 13, 1888, the law of the land, in the absence of cooperation on the part of China. On this supposition it is rather difficult to assign any justifiable occasion to the introduction of another bill, much less of the Scott bill, whose provisions were in direct contravention of the terms of the treaty.

In the study of this situation the true reason for this legislation can be ascertained only from behind the scenes. The treaty, as concluded and amended, did not quite measure up to the expectations of the people, who were clamoring all the time for stricter restriction. As soon as it was made public it was criticized severely in some quarters; and many people even so dearly wished for a rejection from China that when they heard of the rumor of the refusal they feared it was "too good to be true." Here is a typical criticism of the treaty:

It is rumored that there is some doubt whether the Chinese government will approve the new treaty because of the amendments introduced by the Senate. These amendments are the only valuable parts of the measure. But we are afraid that no such good luck is before us. The scarcely concealed bribe of \$276,000 to the Chinese government will secure the ratification. If the treaty were rejected, the administration would no longer have any excuse to oppose the only legislation that will reach the root of the Chinese evil. The treaty, even as amended, can lead to nothing but the gravest complications. . . . It is, in fact, the most outrageous sell-out of the present administration. It may be regarded as a treaty to facilitate Chinese immigration. Under it this country will be flooded with Chinese. Every coolie now ashore can be duplicated as often as he departs, while new hordes can be introduced by the transit privilege."

This kind of criticism threw the Democratic administration in an unfavorable light; and as this happened on the eve of a national election, the situation was regarded as ominous of serious consequences. This could be the only reason why the rumor of the rejection of the treaty by China was seized upon by the friends of the administration to win back the favors of the probably estranged voters.

No sooner had the Scott bill been introduced than it leaked out that it was an "administration measure" of the "Kitchen Cabinet." Quoting the *New York World* of September 6, 1888, Senator Plumb, from Kansas, said:

The bill introduced in the House yesterday relating to the Chinese was the work of the Kitchen Cabinet. Mr. Scott brought that bill from the White House, . . . and it was written upon administration paper. . . .

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<sup>1</sup> "San Francisco *Bulletin*, July 12, 1888. Reproduced in *Congressional Record*, Vol. 19, Part 7, p. 6571.

It seems that he read in the newspaper last Sunday morning that the Chinese government had rejected the pending treaty. This is all the information that the Kitchen Cabinet or the House had upon the subject. Mr. Bayard was out of town and had not been consulted concerning this important action. It is not the first time that Mr. Bayard has been ignored by the Kitchen Cabinet.

Mr. Scott has now made arrangements to create popularity on the Pacific Coast. This was the meaning of the bill of yesterday. It was this which galloped it through the House without debate or consideration. . . . After the potential whisper went about that the bill was from the White House, there was not a single objection.<sup>48</sup>

The situation will be further clarified by another extract from the New York *Globe* of September 8, 1888, read by Senator Teller, of Colorado:

Both Democrats and Republicans have manifested a keen anxiety to take advantage of the rejection of the treaty and to use the opportunity in such a way as to win the anti-Chinese vote by proposing the most vigorous laws for the exclusion of the Chinese from this country. The Democrats have been too quick for their adversaries; for on Saturday [it ought to be Monday], before it was officially known that China had refused to ratify the treaty, Mr. Scott, of Pennsylvania, a member of the Democratic National Committee and the President's most intimate friend, asked unanimous consent of the House of Representatives to introduce for immediate consideration a bill . . . relating to the Chinese. No one on either side of the House dared to interpose an objection, and by unanimous consent the bill was introduced.<sup>49</sup>

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<sup>48</sup>Reproduced in *Congressional Record*, Fiftieth Congress, First Session, Vol. 19, Part 9, pp. 8332-8333.

<sup>49</sup>*Ibid.*, p. 8500.

## CHAPTER VII

### RESTRICTION LEGISLATION OF 1892; OR, THE GEARY ACT

AFTER the act of October 1, 1888, went into operation, many difficulties arose. This was as expected. A number of Chinese arrived at the port of San Francisco eight days after the passage of the act, holding return certificates and demanding admission, and yet no provision had been made for them, as President Cleveland had suggested in his message of October 1, 1888, when he approved the said act.

As the act applied only to the return of Chinese who had been to the United States and did not provide for the transit of Chinese who had not been to this country, the free interpretation of the act by the customs officers in refusing the landing of four Chinese in transit at the port of New York had entailed great hardship on the Chinese returning to China from Cuba by way of the United States, because thereupon the steamers sailing from Havana refused to allow Chinese to come on board.

On inquiry the Chinese Minister was replied to by a statement from the State Department that neither the Attorney-General nor the Secretary of State could perceive any obstacle in the legislation of the United States which would induce a change in the practice of permitting such transit.<sup>1</sup> Moreover, the statutes of transit prior to the act known as the Scott bill were held by the Treasury Department to remain "undisturbed."<sup>2</sup> Nevertheless, the Treasury Department on September 28, 1889, by way of devising measures to prevent violation or evasion of the statutes under cover of the transit privileges, had made regulations requiring Chinese in transit at the American port to produce a through ticket, to make out a description, and to give a bond in the penal sum of not less than \$200 for each Chinese laborer.<sup>3</sup> The Chinese Minister filed his last note of protest against these unjust regulations on December 16, 1889.

On April 15, 1890, a resolution was adopted by the Senate inquiring into the status of affairs in regard to the transit of Chinese through the United States, as to whether any Chinese had failed to depart in due course of transit. After four days a reply came from the Treasury Department, saying:

No Chinese who have entered the United States under these regulations have failed to depart from the United States, and not more than one hundred Chinese persons have availed themselves of the privileges prescribed by said regulations.<sup>4</sup>

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<sup>1</sup>Senate Executive Document No. 41, Fifty-First Congress, First Session, 1889-90, Vol. 5, pp. 2ff. <sup>2</sup>*Ibid.*, p. 17. <sup>3</sup>*Ibid.*, p. 29.

<sup>4</sup>Senate Executive Document No. 106, 1889-90, p. 1.

Meantime, on February 27, 1890, a Select Committee on the Eleventh Census reported a bill (H. R. 6420) providing for an enumeration of the Chinese population in the United States and issuing to each Chinese person a certificate which thereafter should be evidence of his right to remain in the United States, and deporting Chinese persons found without such certificates after completion of the enumeration.<sup>5</sup> This was necessitated by the alleged "clandestine introduction of Chinese laborers" from the contiguous territory of British America and Mexico. This bill passed the House March 17, 1890, and was considered and tabled in the Senate.

This state of affairs called for a concurrent resolution from the Senate April 30, 1890, requesting the President of the United States to negotiate with Great Britain and Mexico so as to prevent the unlawful entry of Chinese laborers into the United States from Canada and Mexico.<sup>6</sup>

But on March 28, 1890, another resolution had been adopted by the Senate calling for information regarding the number of arrivals and departures of Chinese and regarding the evasions of the law. A reply was received from the Treasury Department on May 13, 1890, transmitting reports of the Special Inspector at San Diego, Cal., in which Mr. Datus E. Coon said:

The Chinese are coming right along despite the work the Customs Department tries to do. We now have in the custody of the United States commissioner's courts twenty-six Chinamen charged with being in and coming to the United States unlawfully. . . . I have filed during this month thirty complaints in the United States commissioner's court for violations of the Scott exclusion act. . . . That this act is a failure is true as to its execution.<sup>7</sup>

The above sketch gives some idea about the agitation of the Chinese question in Congress since the passage of the act of October 1, 1888. This being the case, we find that the repeated protests of the Chinese government through her Minister, the reported large number of arrivals by evasion of the law, and the defective feature of the act of October 1, 1888, in not providing for the coming of Chinese who had never been to the United States, gave occasion for the introduction of two bills in the House in January, 1890.<sup>8</sup>

But on August 5, 1890, Mr. Morrow, from the Committee on Foreign Relations, reported back a substitute (H. R. 11656), with a speech setting forth the necessity and the object of the measure. He held that the act of 1888 provided only against the return of Chinese laborers who had been in the United States and had not

<sup>5</sup>House Report No. 486, Fifty-First Congress, First Session, 1889-90, Vol. 2, Part 1.

<sup>6</sup>Senate Journal, 1889-90, p. 270.

<sup>7</sup>Senate Executive Document No. 97, 1890, Vol. 9, Part 7, pp. 2-4. Report dated April 2, 1890.

<sup>8</sup>See House Journal of Fifty-First Congress.

returned prior to the passage of the act; but it did not provide against the coming of Chinese laborers who were never in the United States. This exclusion was contained in the original act of May 6, 1882, which would expire by limitation on August 5, 1892, unless it was further extended by the amendatory act of July 5, 1884. And any interregnum between their expiration and proper legislation to carry out the existing policy would be availed of by hosts of incoming Chinese, and the whole work of the preceding decade would be practically undone. "In any event," he continued, "it is time some action was being taken by the United States in determining and declaring the permanent future policy of this country respecting Chinese immigration. The bill now under consideration proposes to settle that question. It makes exclusion permanent and thoroughly effective." This bill was read and referred.

During the first session of the Fifty-Second Congress as many as twelve bills were introduced in both houses relating either to the prohibition of Chinese immigration or to the amending of laws regulating Chinese immigration. Of the House bills, No. 6185 was reported back by Mr. Geary, from the Committee on Foreign Relations, on February 18, 1892, in lieu of House Bill No. 37. The House bill (H. R. 6185) contains fourteen sections, and substantially they are as follows:

*Section 1* provides that from and after the passage of this act it shall be unlawful for any Chinese person, whether having been in the United States or not (excepting diplomatic representatives and commercial agents), to come to the United States. And the coming of Chinese persons to the United States for transit shall be absolutely prohibited.

*Section 2* provides a penalty of a fine of \$500 or of imprisonment for one year for the master of any vessel who shall knowingly bring within the United States and land or attempt to land or permit to be landed any Chinese person excepting the exempted classes.

*Section 3.* That the Chinese persons mentioned in Section 1 of this act as exempted from the provisions of exclusions shall be admitted upon the production of their official credentials.

*Section 4.* That Collectors of Customs are hereby empowered to administer and take from any person oaths, affirmation, affidavits, or depositions in any matter or proceeding relating to the identification of Chinese persons. Persons guilty of perjury shall be punished by a fine of not less than \$1,000 and by imprisonment at hard labor for not less than one year.

*Section 5.* Any vessel whose master shall knowingly violate the provisions of this act shall be deemed forfeited to the United States.

*Section 6.* That any person knowingly bringing or causing to be brought, aiding, or abetting the landing of any Chinese person shall be fined in a sum not exceeding \$1,000 or imprisoned for a term not exceeding one year.

*Section 7.* That any Chinese person entering the United States by crossing the boundary lines may be arrested upon a warrant issued upon a complaint under oath filed by any party on behalf of the United States and, when convicted and adjudged as being unlawfully within the United States, shall be imprisoned in the penitentiary for a term not exceeding five years and at the expiration of the term be removed from the country.

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\*House Report No. 2916, Fifty-First Congress, First Session, Vol. 9, pp. 1-7.



*Section 8.* That the provisions of this act shall apply to all subjects of China and to all Chinese, whether subjects of China or of any other foreign power.

*Section 9.* That any violation of this act the punishment of which is not otherwise provided shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year.

*Section 10.* That hereafter no State court or court of the United States shall admit Chinese to citizenship.

*Section 11.* That the Collector of Customs of the port where any vessels arrive having Chinese persons aboard seeking admission shall determine who are and who are not Chinese, and his decisions may be reviewed only by the Secretary of the Treasury. When a writ of habeas corpus is issued to determine the right of any Chinese person to land whose right of landing has been decided adversely by the Collector of Customs, pending the hearing of such petitions the person shall remain in the custody of the Collector and shall not be admitted to bail.

*Section 12.* That all Chinese persons within the United States shall apply to the Commissioner of Internal Revenue for a certificate of residence, and any Chinese person who shall fail or refuse to comply with the provision or shall be found without such certificate of residence within one year after the passage of this act shall be adjudged as being unlawfully within the United States and shall be subject to the same fines and penalties as in the case of unlawful coming.

*Section 13.* That immediately after the passage of this act the Secretary of the Treasury shall make such rules and regulations and prescribe the necessary forms of the certificates. The certificate shall contain a photographic copy of the applicant. On applying for such certificate, the applicant shall pay \$3 to the Commissioner of Internal Revenue.

*Section 14.* That all acts or parts of acts inconsistent herewith are hereby repealed, and the provisions of all treaties now in force, if in conflict with the provisions of this act, are hereby abrogated.<sup>10</sup>

Introducing the bill for consideration on April 4, 1892, Mr. Geary, of California, said:

This bill is intended to prevent the coming of the Chinese into the United States. The existing law on this subject will expire by limitation on the fourth day of May. Since that law went into operation we have found many defects in it, although at the time it was presented to the House, ten years ago, everybody confidently believed that the passage of the law would settle the Chinese question and that in time we might look for a reduction in the number of these persons in our midst. Contrary to expectations, we find that in the last ten years more than 60,000 Chinese have entered into the United States through the port of San Francisco alone, while a large number have come over the border.<sup>11</sup>

Mr. Hooker, of Mississippi, objected to the harsh provisions of the first, second, eleventh, and fourteenth sections of the bill and protested that there were no reasons why the House should abrogate all treaties with the Chinese Empire. "It is bad faith; and we ought to keep our faith with every nation, whether it be a great or a small one."<sup>12</sup>

Mr. Hitt, from Illinois, contended that it violated the nation's plighted faith and that many losses would follow this proposed measure of nonintercourse.

<sup>10</sup>*Congressional Record*, Fifty-Second Congress, First Session, Vol. 23, Part 3, p. 2911. <sup>11</sup>*Ibid.*, p. 2912. <sup>12</sup>*Ibid.*, pp. 2912-2913.

But they are of little importance compared to this proposed shame in falsifying our word as a nation in a legislative step so deliberately taken.<sup>13</sup> . . . This savage exclusion and extreme punishment of all strangers is a revival of the darkest features of the darkest ages in the history of man; . . . a declaration of our falsehood, coldly avowing that it will set aside a treaty which the other party has carefully and scrupulously observed.

Mr. Geary retorted by charging that the Chinese government had done everything in her power to violate the spirit of that treaty, as her Minister was seen going into court and defending the right of the Chinamen who were arrested for coming contrary to the laws of this country, and that the treaty was abrogated four years ago by an act of Congress, and that act was upheld by the Supreme Court.<sup>14</sup> Mr. Cutting, from California, urged the passage of the bill because the existing law of restriction would expire on May 6; and unless some prompt action was taken, an influx of this "unassimilative and undesirable race" would pour in in larger numbers than ever before.<sup>15</sup> Then the bill passed the House on April 4, 1892, by a vote of 178 to 43, 108 not voting.

Meanwhile, on February 19, 1892, the Senate had passed a bill (Senate Bill No. 540) on the same subject to continue all existing laws prohibiting and regulating the coming of Chinese for a period of ten years and presented it to the House, and was awaiting its action when the House bill came to the Senate for its concurrence. On April 21, 1892, this bill was reported from the Committee on Foreign Relations in the Senate, with an amendment to strike out all after the enacting clause and insert substantially the following:

*Section 1.* That all laws now in force prohibiting and regulating the coming of Chinese are hereby continued in force for a period of ten years from the passage of this act.

*Section 2.* That any Chinese person convicted and adjudged as being unlawfully within the United States shall be removed to China or to any other country of which such person is a citizen.

*Section 3.* That any Chinese person arrested under the provisions of this act shall be adjudged unlawfully within the United States unless such person shall establish by affirmative proof to the satisfaction of the judge, etc., his lawful right to remain in the United States.

*Section 4.* That any such Chinese person, once convicted and adjudged as being unlawfully within the United States, who shall be subsequently convicted for a like offense, shall be imprisoned at hard labor for a period not exceeding six months and thereafter removed from the United States.<sup>16</sup>

Senator Dolph, of Oregon, led the debate. He first expressed his surprise that the House did not consider the Senate bill, but sent up another bill, and stated how, when referred to the committee, the House bill was amended and substituted by the Senate bill, which had once been passed, and added that, whatever

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<sup>13</sup>*Congressional Record*, Fifty-Second Congress, First Session, Vol. 23, Part 3, p. 2913. <sup>14</sup>*Ibid.*, pp. 2914-2915. <sup>15</sup>*Ibid.*, p. 2915.

<sup>16</sup>*Congressional Record*, Fifty-Second Congress, First Session, Vol. 23, Part 4, pp. 3475-3476.

might be said as to the necessity for more stringent legislation, the part of wisdom was that some practical legislation should be agreed upon by both branches of Congress and approved by the President of the United States before May 6 to continue the existing legislation, which was to expire on the above-mentioned date.<sup>17</sup>

Senator Felton, of California, dissenting from the argument of Senator Dolph, wished to get the best legislation possible to exclude the Chinese and said that his objection to the pending bill was that it was practically the reënactment of the existing law which had failed to answer the purpose and had been the source of fraud and corruption and manifold evasions.<sup>18</sup>

Senator Sherman, of Ohio, the Chairman of the Committee on Foreign Relations, rose and stated the general view of the whole committee by saying that the House bill contained severe restrictions which would read very strangely in the law of the United States. There were some provisions which might probably be tolerated, but some of the provisions ought not to be inserted in any law of the United States, and the substitute of the bill continued in force all the restrictions and limitations which had been deemed proper to prevent the coming of Chinese laborers, and, besides, added severe penalties to those who should violate the provisions thereof. In view of the harsh provisions of the House bill, it became a question whether it would be wise for the Senate of the United States to pass the House bill under the heat of local feeling. "Yet," he further says, "it is a feeling in which we sympathize with our friends, but we wish they would mitigate this evil in somewhat of a modern and Christian way."<sup>19</sup>

Senator Butler, of South Carolina, said: "The substitute is harsh enough, but the bill as it comes from the House is a disgrace to this country."<sup>20</sup>

Mr. Chandler, from New Hampshire, was of the opinion that the immigration of Chinese required more stringent measures and suggested the retention of Section 7 of the original House bill, only changing the period of "five years" to "two years of imprisonment."<sup>21</sup>

Senator Davis, from Minnesota, complained of the House bill and said it was "a rank, radical, unblushing, unmitigated repudiation of every treaty obligation" with China and a disavowal of the obligation to observe any rights vested under these treaties.<sup>22</sup>

Mr. Teller, from Colorado, while defending the right of the United States to abrogate a treaty when it was contrary to the interests of the nation to enforce its provisions, thought the House bill was exceedingly harsh, adding:

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<sup>17</sup>*Congressional Record*, Fifty-Second Congress, First Session, Vol. 23, Part 4, pp. 3476-3478. <sup>18</sup>*Ibid.*, p. 3480. <sup>19</sup>*Ibid.*, p. 3481. <sup>20</sup>*Ibid.*, p. 3486. <sup>21</sup>*Ibid.*, p. 3522. <sup>22</sup>*Ibid.*, p. 3531.

While the Chinaman is objectionable and the legislation in relation to him ought to go upon the theory that he is to be excluded, I do not myself think that we can afford to pass harsh and unreasonable laws. The Chinese who come with our consent are entitled to the rights of domicile. They are entitled to the protection of the law.<sup>23</sup>

Senator Hiscock criticized the substitute because it provided that a Chinese laborer had no right here and because the burden of proof to establish his right was thrown upon him and said:

The passage of this measure must of necessity result in a practical banishment from the Pacific States of the Chinese laborers. Any one member of any of those States who sees fit to prosecute the Chinaman under provisions of this act can drive the whole race from our shores.<sup>24</sup>

Senator Morgan, of Alabama, alleged that the laborers were not coming in such large numbers as to be competitors. His observation on the Pacific Coast convinced him that the number of Chinese distributed among different occupations could scarcely be called inconvenient, and he could see no reasons for giving offense to China by the further legislative modification of the rights of hospitality which were secured by the treaty with that country of 1880.<sup>25</sup>

Senator Sanders, of Montana, argued that the legislation regarding Chinese immigration did not proceed from the hypothesis that it was essential to American religion or civilization. It was a law to protect American industry and could be defended upon economic grounds. He charged that the existing law was useless as a protection to the United States, first, because of the evasion of law on the part of Chinese, and, secondly, because of the loose practice on the part of judicial officers.<sup>26</sup>

Senator Squire, from Washington, pointed out the inefficiency of the government to carry out the provisions of laws already enacted and said that it was demagoguery of the most arrant kind for the Representatives of the United States in Congress to inveigh against Chinese and to pass act after act for the purpose of their exclusion, when at the same time Congress failed to provide a reasonable sum of money to enable the law to be efficiently executed. He believed that the great question in San Francisco was identification, and he suggested that some provision should be ingrafted into the bill for registering Chinese and issuing to them certificates; but he did not believe it necessary to increase the number of classes of Chinese that should be excluded and would be willing to admit merchants, visitors, and scholars, in addition to the diplomatic representatives.<sup>27</sup>

Senator Mitchell, of Oregon, asserted that he would give his support to this substitute, not because it met the expectation of the great masses of the people of the Pacific States, but because it was better than nothing. He considered the speeches made by

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<sup>23</sup>*Congressional Record*, Fifty-Second Congress, First Session, Vol. 23, Part 4, pp. 3558-3559. <sup>24</sup>*Ibid.*, p. 3560. <sup>25</sup>*Ibid.*, p. 3564. <sup>26</sup>*Ibid.*, p. 3567. <sup>27</sup>*Ibid.*, p. 3640.

members of the Committee on Foreign Relations as fallacious and illogical, because, denouncing the House bill as violating the treaty with China, the committee proposed an amendment that did the same thing.<sup>28</sup> He very sarcastically insinuated that if the committee desired to give full expression to their sentiments, the only way would be to recommit the bill to the committee, with instructions to report a measure repealing all laws and treaties restricting Chinese immigration and reenacting all the provisions of the original treaties of 1858 and 1868. Congress should be willing to do one of two things—namely, either to keep faith with China regarding each and every provision of the treaties, or, “if we are willing to go one step in the abrogation of the provisions of any of those treaties for the purpose of protecting our own interests in this country, we should be willing to take the necessary steps in order to make our legislation effective.”<sup>29</sup>

Senator Call, of Florida, brought up the rear of the debate with a speech commending the glorious past of the Chinese people and their good racial qualities and pointing out the possible evil consequence of this policy of nonintercourse with China. After this a vote was taken, and the amendment, as reported by the Committee on Foreign Relations, was passed by a vote of 43 to 14, 31 not voting.<sup>30</sup>

After the amendment became the text of the bill, amendments to the text of the bill were in order. Senator Platt, of Connecticut, offered to insert in Section 1, after the word “descent,” the following clause, “Excepting only the act approved October 1, 1888,” etc., so that the reenactment of the restrictive laws might not extend to the Scott act. Senators Sherman, Gray, Dawes, and Call were openly in favor of this amendment, while Senators Stewart, Dolph, Mitchell, Vest, and Palmer definitely declared against it, and by a vote of 8 to 45 the amendment was rejected.

Two other amendments were offered—one, respecting Section 4, to strike out “once” and make the imprisonment for the first offense six months and that for the second offense one year; the other, respecting the provision regarding the application and issuance of certificates of residence to Chinese persons, to be inserted in Section 1. Both of these were rejected.<sup>31</sup>

The bill passed the Senate April 25, 1892, under the amended title: “A Bill to Prohibit the Coming of Chinese Persons into the United States.” After this a motion was put to ask a conference with the House of Representatives. The motion was agreed to, and thereupon Senators Dolph, Davis, and Butler (afterwards substituted by Gray) were appointed as conferees on the part of the Senate.<sup>32</sup> Afterwards, on leave of absence, Davis and Gray were substituted by Sherman and Morgan.<sup>33</sup>

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<sup>28</sup>*Congressional Record*, Fifty-Second Congress, First Session, Vol. 23, Part 4, p. 3612. <sup>29</sup>*Ibid.* <sup>30</sup>*Ibid.*, p. 3624. <sup>31</sup>*Ibid.*, p. 3628. <sup>32</sup>*Ibid.*, p. 3629. <sup>33</sup>*Ibid.*, p. 3734.

The House, disagreeing with the amendment of the Senate, on April 26, 1892, appointed Mr. Geary, of California, Mr. Chipman, of Michigan, and Mr. Hitt, of Illinois, as conferees on the bill to hold the appointed conference with the conferees of the Senate.<sup>54</sup>

On May 2, 1892, Senator Dolph submitted to the Senate a report of the conference on the disagreeing votes of the two houses, in which the following amendments were agreed upon: In Section 3, after the word "act," insert the words "or the acts hereby extended." In Section 4, after the word "descent," strike out the word "once." In Section 4, after the words "United States," strike out all down to the word "shall." In Section 4 strike out the words "six months" and insert "one year."

Five sections were added substantially as follows:

*Section 5.* That after the passage of this act on application for a writ of habeas corpus by a Chinese person seeking to land, no bail shall be allowed.

*Section 6.* That it shall be the duty of all Chinese laborers in the United States to apply for a certificate of residence within one year after the passage of this act, and any Chinese laborer found without such certificate after this period shall be adjudged as unlawfully within the United States and shall be arrested and deported from the United States, unless he shall establish, to the satisfaction of the judge, that by reason of accident or sickness he has been unable to procure his certificate, and to the satisfaction of the court and by at least one credible white witness that he was a resident of the United States at the time of the passage of this act. Any Chinese other than Chinese laborers desiring such certificates of residence may apply and receive the same without charge.

*Section 7.* That the Secretary of the Treasury shall make such rules and regulations as may be necessary for the efficient execution of this act and shall prescribe forms and prepare blanks necessary for the issuance of certificates as required by this act.

*Section 8.* That any person who shall knowingly and falsely alter any name in the certificate or forge such certificate or falsely personate any person named in such certificate shall be fined upon conviction in a sum not exceeding \$1,000 or imprisonment for a term of not more than five years.

*Section 9.* That the Secretary of the Treasury may authorize the payment of compensation in the nature of fees to the Collectors of Internal Revenue in addition to their salaries not exceeding the sum of \$1 for each certificate.

The House also agreed to the amendment of the title of the bill.<sup>55</sup>

Senator Sherman, though one of the conference committee, did not sign the report. His objections to the measure were: First, the requirement of certificate of residence of every Chinaman lawfully within the United States. By this provision the United States would have one hundred or two hundred thousand men, mostly employed in the humble occupations of life, armed with their certificates, liable to be called upon by any revenue collector to show their certificates; and unless they could show such certificates or prove their loss, they were liable to be deported. Sec-

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<sup>54</sup>*Congressional Record*, Fifty-Second Congress, First Session, Vol. 23, Part 4, p. 3638. <sup>55</sup>*Ibid.*, p. 3832.

only, because it required a white witness and threw upon the Chinese himself the burden of proof of his right to be here.

Yet we have agreed by this treaty<sup>36</sup> not only that we would not discriminate against them in our legislation, but that we would permit these laborers to remain in the position of persons of the "most favored nation."<sup>37</sup>

Senator Dolph explained that it was in the interest of the Chinese laborers to possess such certificates so that they might be exempt from malicious interruption and annoyance, and this requirement upon Chinese persons other than laborers was optional and not imperative. And in regard to the requirement of a "white witness," he contended that the conference was only intending to provide a witness who should not be a Chinese witness, and the use of the word "white" was accidental.<sup>38</sup> Finally, on May 3, 1892, the conference report was concurred in by a vote of 30 to 15, 43 not voting.<sup>39</sup>

The conference report was brought to the House two days later by Mr. Geary. Mr. Hooker and Mr. Hitt called for an explanation of this report. Mr. Geary replied that this bill provided for the continuance of existing laws upon the subject. It was not the House bill. All those drastic features had been eliminated by the Senate. The Senate had agreed to this report, and the House was anxious to get it through, because the law would expire within two days.<sup>40</sup>

Mr. Hitt objected to the series of important amendments made by the Committee of Conference to the bill as amended by the Senate. It compelled every Chinese laborer in this country to go to the Collector of Internal Revenue to prove his title to remain in this country and to apply for a certificate—"a pass, a sort of ticket of leave." To obtain this he must himself prove the whole case. He was presumed not entitled to it.

The burden of proof is all upon him. The rules of all free countries and all civil laws are reversed. He must find the witnesses in different places where he may have worked or resided, and one witness must be a white man. Never before was this system applied by a free people to a human being, with the exception of the sad days of slavery.<sup>41</sup>

Mr. Hooker said:

This bill, as I understand it, virtually denies the writ of habeas corpus, because it clothes the judge with the power of imprisoning the party without bail. Such a thing has never been known in the history of American jurisprudence. You may get the glory in this Democratic House of Representatives by putting such a measure upon the statute book. I want to record my vote against it.<sup>42</sup>

Mr. Geary, answering these charges, contended that, in regard to the proceedings of habeas corpus, this had been the practice

<sup>36</sup>Article III of Treaty of 1880.

<sup>37</sup>*Congressional Record*, Fifty-Second Congress, First Session, Vol. 23, Part 4, pp. 3870-3871. <sup>38</sup>*Ibid.*, p. 3872. <sup>39</sup>*Ibid.*, p. 3879. <sup>40</sup>*Ibid.*, p. 3922.

<sup>41</sup>*Ibid.*, p. 3923. <sup>42</sup>*Ibid.*, p. 3924.

in the courts in California, and not a single instance could be found in the proceeding and practice of any court where bail was permitted before the body of the prisoner was produced. As to the charge of Mr. Bushnell that the bill changed the universal rule of the presumption of innocence, Mr. Geary said that there was nothing new in this, and cited the internal revenue law respecting persons selling liquors and tobacco, that they must first obtain a license; and when arrested for a violation of the revenue laws, the burden of proof was on them to establish their right to deal in these articles and was not on the people to prove them guilty. "This bill is precisely similar."<sup>43</sup> The report was then agreed to, on May 4, 1892, by a vote of 186 to 27, 115 not voting.<sup>44</sup> It was approved the next day by the President of the United States.

This piece of legislation has been traced and analyzed so minutely in all its bearings and meaning in the present chapter that it would be unwelcome service to draw any particular conclusion which any unbiased reader or student will naturally arrive at as logically inevitable; but it will be incomplete in its interpretation without a glance at what was going on at the same time between the Executive Department and the Chinese government.

While the Chinese Minister was protesting strongly and repeatedly but vainly against the Scott law and its harsh enforcement, Tsung-li Yaman, of the Chinese Foreign Office, had received information about the passage of the House bill in the Lower House and instructed the Chinese Minister at Washington to bring to the attention of the American government the fact that the bill was in violation of the treaty stipulations.<sup>45</sup>

From March 22 to May 5, 1892, Minister Tsui sent as many as four notes to the State Department protesting against this measure. But his protest was disregarded, and the bill went on its course. In the month of November, Minister Tsui addressed two notes to the State Department, when Mr. Foster superseded Mr. Blaine, urging the appeal for the immediate consideration of all the former notes sent by the Chinese Ministers and for such alteration of the act as to preserve the friendly relationship between the two nations. And on December 10 a reply came from Mr. Wharton, acting Secretary of the State Department. Since this was the only formal reply to the Chinese protest in three years' time (or since January 26, 1889, when Minister Chang sent his last note of protest), its significance is evident.

In this note, trying to answer some of the points of the former Chinese notes, Mr. Wharton did not think it necessary to discuss the circumstances under which the Treaty of 1888 failed,

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<sup>43</sup>*Congressional Record*, Fifty-Second Congress, First Session, Vol. 23, Part 4, p. 3924. <sup>44</sup>*Ibid.*, p. 3925.

<sup>45</sup>For correspondence, see Senate Executive Document No. 54, Fifty-Second Congress, Second Session, Vol. 2.



but said that the failure of the treaty, through the withholdment of the Imperial government, exerted a prejudicial influence upon American sentiment thereafter. In regard to the treatment of aliens in China, he thought it was not difficult to show that from the outset the position of the foreigner in China had been one of violation and exclusion. The foreign States had impliedly recognized the inherent right of China to regulate the domicile and business of aliens within her borders. The application of this right by China was governed by the inherent immiscibility of the Mongolian and Caucasian races. "As are all Europeans to the native Chinese communities, so are the Chinese to the communities of European blood." As regards the maltreatment of Chinese and acts of lawlessness in the United States, he contended that it would be easy to cite cases where United States citizens had been victims of mob violence in China, and no good would result from such arguments.

As to the present act, which provided identification and certification of the Chinese laborers, he held that this statute as completely aimed to protect the persons and rights of the Chinese entitled to residential privileges as it did to prevent their fraudulent enjoyment by those not entitled thereto. "The provisions of this legislation are practically designed to accord such Chinamen [lawfully resident in the United States] privileges and a measure of individual freedom far beyond those accorded to American citizens in China." As to the oppression and unconstitutionality of this legislation, he said:

I am unprepared to admit the charge of hardship until the practical application of its provisions shall have demonstrated it by positive proof. It is regrettable that the attitude of the Chinese themselves appears to be as much one of defiance of the provisions of the statute as that of your government is of protest against it in advance of a fair trial of its workings. As to the charge of unconstitutionality brought against the penal provisions of the act in question, that is a matter to be determined only by the judicial branch of the government, which is as freely open to the Chinese subjects as to the citizens of the United States. It is the duty of the executive to enforce the law, and no executive power exists to evade or repeal it.

He concluded by saying:

The province of the executive branch in this discussion is to bring about a better understanding of the matter and to reach a good accord as to the principles involved. . . . I see no reason why a better understanding may not be brought about whereby the position of China shall be rather one of amiable concurrence toward a rational and practical end than one of obstruction to the working of measures the adoption of which has been in a large degree forced upon the legislative power of the United States by the conduct of the Chinese people in this country and by the attitude of the Imperial government in their regard.<sup>46</sup>

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<sup>46</sup>Senate Executive Document No. 54, Fifty-Second Congress, Second Session, 1892-93, Vol. 2, pp. 41-43.

## CHAPTER VIII

### RESTRICTION LEGISLATION OF 1893; OR, THE MCCREARY AMENDMENT TO THE GEARY ACT

It will be expedient to carry over the impression of the preceding chapter, when the Chinese Minister received, on December 10, 1892, from the State Department an unfavorable reply to his long series of strenuous protests against the Geary act of 1892.

At the inception of the second administration of President Cleveland, Tsui Kuo Yin, the Chinese Minister, on March 13, 1893, in great apprehension of the serious consequences attendant upon the act of 1892, especially the sixth section, when it should go into operation on May 6, addressed a note to Secretary Gresham, of the State Department, directing his attention to the difficulties and embarrassments confronting the two governments and asking the aid and coöperation of the United States government to avert the threatening dangers.<sup>1</sup> Minister Tsui Kuo Yin also intimated that a test case would be presented to the Supreme Court for the purpose of testing the constitutionality of the law, which had been declared unconstitutional by many great lawyers in the United States, such as James Carter and J. Hubley Ashton; and he requested that some method of procedure should be adopted to protect the Chinese people who were rightfully within the United States from arrest and imprisonment until the validity or invalidity of the law was established by the Supreme Court.<sup>2</sup>

On April 13 and 29 Minister Tsui, on receipt of a note from the Chinese Consul General at San Francisco and a telegram from the Chinese Merchants' Exchange at San Francisco, sent two notes to the State Department advising the Secretary of the great apprehension of the Chinese on the Pacific Coast and throughout the United States of personal violence and destruction of property by evil-disposed persons when the act should go into effect on May 5.<sup>3</sup>

On the day when the act became a law the Chinese Minister received a reply from Secretary Gresham assuring him that "the United States will not fail to exert to its full extent its lawful authority for the preservation of good order and tranquillity and for securing to all Chinese dwellers in this country adequate protection."

As soon as the Geary law went into operation certain test cases were brought before the Supreme Court, and on May 15, 1893, a

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<sup>1</sup>House Executive Document, Fifty-Third Congress, Second Session, 1893-94, Vol. 1, "Foreign Relations," p. 245.

<sup>2</sup>*Ibid.*, p. 245. <sup>3</sup>*Ibid.*, pp. 247-248.

decision was rendered by that court sustaining the law.<sup>4</sup> This decision changed the whole face of affairs. The law was to be enforced.

In a conversation with the Secretary of State, Minister Tsui asked two questions for information: First, whether the Secretary felt reasonably certain that the Chinese in this country would not be "abused, beaten, wounded, and murdered," as in the past; secondly, whether he thought the Geary law would not be at once enforced. To these the Secretary replied that if China would protect the Americans in China, the United States would be able to protect the Chinese in this country. And, as to the second point, he contended that the President, whose duty it was to execute the laws, could not suspend a law of Congress; but, owing to the terms and requirements of the Geary law, its enforcement would necessarily be attended with some delay. And he did not believe that the Chinese would be deported in large numbers between now and the assembling of Congress, when, as he had reason to believe, there would be further legislation on the subject.<sup>5</sup>

When the special session of Congress met, in August, Minister Tsui took occasion to request the President, through the Secretary of State, "to suggest in his speech to Congress the repeal of the said Geary law," to the end that the stipulations of treaties between the United States and China might be maintained and upheld.<sup>6</sup> But the Secretary replied that, as Congress was convened in special session to deal with serious financial stress, it was not the President's desire to distract the attention of the members from the urgent business by the submission of other measures, and that he believed that the Geary law would be modified at the next regular session of Congress.<sup>7</sup>

The enforcement of the law was anything but satisfactory when it went into operation, because a large number of Chinese had failed to avail themselves of the opportunity of registration. According to the report of the Treasury, dated September 12, 1893, there were 106,688 Chinese in the United States. Of this number, 13,243 registered under the act of May 5, 1892, leaving 93,445 unregistered. Assuming that ten per cent of this number belonged to the exempted classes, there still remained 85,000 unregistered.<sup>8</sup> This was accounted for by the fact that shortly after the passage of the act, when it was declared unconstitutional by some prominent lawyers in this country, the Chinese "six companies" issued a circular to all the Chinese laborers of the United States advising them not to comply with the law, because:

First, the law makes no distinction between Chinese who are aliens and Chinese who are citizens of the United States. A citizen of the Chinese race is entitled to the same rights and privileges as any Cau-

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<sup>4</sup>House Executive Document, Fifty-Third Congress, Second Session, 1893-94, Vol. 1, "Foreign Relations," p. 243, dispatch from Mr. Gresham to Mr. Denby. <sup>5</sup>*Ibid.*, p. 250. <sup>6</sup>August 8, 1893; *ibid.*, p. 252. <sup>7</sup>*Ibid.*, pp. 253-254.

<sup>8</sup>Senate Executive Document No. 13, Fifty-Third Congress, First Session.

casian citizen. . . . It is a cardinal principle of constitutional law that all laws in reference to citizens must be equal and uniform in their operation. Secondly, Congress has no power to provide for the deportation of a citizen as a penalty for any crime. Thirdly, the fifth amendment of the Constitution provides that no person shall be deprived of life, liberty, or property without due process of law, and the eighth amendment provides that cruel and unusual punishment shall not be inflicted. Fourthly, the treaty between the United States and China provides that Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, and exemptions as subjects of the most favored nation.\*

In view of the large number of Chinese of this class and the enormous sum of money necessary for their deportation (at least from \$35 to \$51 *per capita*),<sup>10</sup> the Treasury Department on May 4, 1893, the day before the law went into operation, issued orders to all collectors of internal revenue and customs "to refrain from making arrests under the provisions of the sixth section of the act of May 5, 1892, until further instructions from the Department."<sup>11</sup> But on May 24 it issued another order to the collectors, making the order of May 4 remain in force as far as it applied to Chinese persons who had failed to obtain certificates, but who would otherwise have a right to remain in the United States, and directing the collectors to use all the means under their control vigorously to enforce the sixth provision of the law and to take necessary measures to secure the arrest and prosecution of Chinese laborers who were unable to show that they had obtained lawful admission into the United States.<sup>12</sup>

On September 6 the Chinese Consul General at San Francisco sent two telegrams to the Chinese Minister at Washington informing him of the arrest of twenty or more Chinese under the Geary act and stating that one hundred others would follow and that one hundred and fifty more warrants would be applied for in Los Angeles the next day.<sup>13</sup>

Upon being asked whether the United States government had abandoned the policy that no arrests and orders of deportation of Chinese residents would be made until Congress should further legislate upon this subject, Secretary Gresham replied that the policy of the United States government remained the same, that the executive power of the government had not initiated any step looking to the effective execution of the act, and that a bill amending the act by affording another opportunity for the Chinese to register was expected to be introduced in Congress and receive its careful consideration.<sup>14</sup>

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\*San Francisco, September 19, 1892, quoted from *Congressional Record*, Vol. 25, Part 2, p. 2443.

<sup>10</sup>Senate Executive Document No. 13, Fifty-Third Congress, First Session.

<sup>11</sup>House Executive Document No. 9, Fifty-Third Congress, First Session, p. 3.

<sup>12</sup>*Ibid.*, pp. 3-4.

<sup>13</sup>House Executive Document, Fifty-Third Congress, Second Session, Vol. 1, "Foreign Relations," p. 256.

<sup>14</sup>*Ibid.*, p. 257, Mr. Gresham to Mr. Yang Yu, September 9, 1893.

On September 27 Minister Yang Yu, in a note to the State Department, called the attention of the Secretary to the incarceration of Chinese in the jails of California for not registering—seventeen in San Francisco, twenty-three in Oakland, and twenty-four in Los Angeles. "No crime has been committed by these persons, yet they are treated as though they are guilty of the highest offense known to the law, while their property and effects are wasted and destroyed." And he suggested that the Attorney-General might discover some means to obtain bail for these Chinese persons pending their appeal to the Supreme Court.<sup>15</sup>

The Department replied with a statement from the Attorney-General that it was the rule of the Supreme Court in such a case that, "pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed," and the only way for remedy would be to apply to the Supreme Court for a modification of its rule.<sup>16</sup>

Added to this state of affairs was a sentiment of reaction throughout the whole country, which had begun to show itself since the legislation of 1888 and which now came out, open and strong, in protesting against, and requesting the repeal of, the Geary act. Therefore during the second session of the Fifty-Second Congress (1892-93) as many as twenty-three petitions, resolutions, and memorials from different public, commercial, and religious organizations in different States were sent to Congress asking for the repeal of the Chinese exclusion act,<sup>17</sup> and during the first session of the Fifty-Third Congress about fifty-four more were presented for the repeal of the Geary act.<sup>18</sup> Several bills were introduced to the same effect. But on October, 1893, Mr. McCreary, of Kentucky, reported from the Committee on Foreign Relations House Bill No. 3687, in lieu of House Bill No. 1973, "to amend an act entitled 'An Act to Prohibit the Coming of Chinese Persons into the United States,' approved May 5, 1892."<sup>19</sup> The first section of the bill amends Section 6 of the original to read substantially as follows:

It shall be the duty of all Chinese laborers in the United States who were entitled to remain in this country before the passage of the act of 1892 to apply within six months after the passage of this act for a certificate of residence; and any Chinese laborer who shall neglect, fail, or refuse to comply with the provisions of this act or who, after six months, shall be found within the United States without such certificate, shall be adjudged to be unlawfully within the United States and may be arrested and deported, unless he shall establish, to the satisfaction of the judge, that, by reason of accident or sickness, he has been unable to procure his certificate and to the satisfaction of the judge and by at least one credible witness other than Chinese that he was a resident of the United States on May 5, 1892. Any Chinese person other than a Chinese laborer entitled

<sup>15</sup>House Executive Document, Fifty-Third Congress, Second Session, Vol. 1, "Foreign Relations," p. 259. <sup>16</sup>*Ibid.*, p. 260. <sup>17</sup>See Senate and House Journals. <sup>18</sup>See Senate and House Journals of the session. <sup>19</sup>*Congressional Record*, Vol. 25, Part 2, p. 2132.

to remain in the United States who desires such certificate of residence may apply for and receive the same without charge. No proceedings for a violation of the provisions of Section 6 of the original act shall hereafter be instituted, and all proceedings for said violation now pending are hereby discontinued.

Section 2. The word "laborer," or "laborers," wherever used in this act or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking or otherwise preserving shell or other fish for home consumption or exportation.<sup>20</sup>

Mr. McCreary introduced the bill with a speech, saying that the bill was important and its passage urgent. It involved the continuance of the amicable relations of two nations and concerned one hundred thousand Chinese persons. If passed, it would save millions of dollars to the United States and would meet the demand for restriction legislation. The "strong and convincing" reason for the passage of the bill was the large number of Chinese who had failed to apply for the certificate of residence provided by Section 6 of the act of May 5, 1892. He attributed this to the misleading opinions given by experienced attorneys in the United States (Choate, Carter, and Ashton), in which they declared that the Geary law was repugnant to the Constitution of the United States, but which law was afterwards sustained by the Supreme Court as valid and constitutional. As this latter decision was not rendered until May 15, 1893, ten days after the period had expired, therefore it seemed just and fair that the Chinese who had failed to register, being misled by the opinions of Choate, Carter, and Ashton, should have six months' additional time to obtain their certificates; and by extending the time for registration six months, the United States could save \$7,000,000, which was the amount necessary for the deportation of 85,000 Chinese, and give enough time to the judges to try the Chinese arrested and do justice to the Chinese persons themselves.<sup>21</sup>

Next, Mr. McCreary called attention to the fact that the bill amended the Geary act by striking out the word "white" from Section 6 and requiring "one credible witness other than Chinese." He held that the propriety of this amendment was so manifest that no discussion was necessary. And the definition of the term "laborer" in Section 2 was based upon the act of 1882 and was made necessary because it was so construed by the Treasury Department in its circulars and orders. He did not favor the idea of requiring the Chinese to be photographed.<sup>22</sup>

Mr. Geary, of California, argued that this was the only effective way of identifying the Chinese and that if the officers of the government had done their duty on May 5 there would be no necessity for an appropriation of \$7,000,000 for deportation or an extension of time.<sup>23</sup>

<sup>20</sup>*Congressional Record*, Vol. 25, Part 2, pp. 2420-2421. <sup>21</sup>*Ibid.*, pp. 2421ff.

<sup>22</sup>*Ibid.*, pp. 2422-2423.

<sup>23</sup>Appendix, *Congressional Record*, Vol. 25, Part 3, pp. 231-232.

Mr. Loud, of California, thought the committee had failed to include "farmer" in the definition of laborers and favored the photographing requirement.<sup>24</sup>

Mr. Bartlett, of New York, thought the amendment to the clause, "one credible white witness," was unnecessary, because all colors were under the protection of the Fourteenth Amendment, and the laws in reference to the competency of testimony were regulated by Congress.<sup>25</sup> And he objected to the proposed bill because, while it wiped out all proceedings taken against the Chinese, it did not guarantee that innumerable proceedings would not be instituted in the future to test the constitutionality of the Geary law and also the McCreary amendment.<sup>26</sup> As for the cost of enforcing the law, he believed in "millions for defense."<sup>27</sup>

Mr. Bowers, of California, disregarded the argument in favor of the bill that the Chinese had been misled by lawyers and contended that misleading by lawyers was an everyday occurrence in the United States and therefore did not constitute a reason for nullifying the law.<sup>28</sup>

Mr. Maguire, of California, alleged that the McCreary bill was practically an act to relieve the Chinese from the consequences of their violation of the Geary law on the ground of their being misled by the advice of their lawyers. But it was a matter of general knowledge that no Chinaman who refused to register was animated by his own motive or judgment, but each was absolutely controlled and directed in his violation of law by an edict issued by the "six companies."<sup>29</sup>

Mr. Herman, of Oregon, believed that the extension of time was a mere trifling with the purpose of the law and regarded it as an acquiescence in the insolent demand of a foreign power and a justification of the defiance and contempt of foreign subjects who refused to comply with the constitutional laws of the United States.<sup>30</sup>

For lack of space I have not thought it necessary to give the pertinent arguments of those who were in favor of the bill. Suffice it to say that Mr. Hitt, of Illinois, Mr. Rayner, of Maryland, Mr. Morse, of Massachusetts, and others gave their support to this bill because it was a measure of fairness and justice; while Mr. Outhwaite, of Ohio, Mr. Everett, of Massachusetts, Mr. Blair, of New Hampshire, and Mr. Dinsmore, of Arkansas, voted for it as a measure of expediency, since the first period of registration had expired and the deportation of those without certificates would have cost such a large amount of money.

After Mr. McCreary's closing speech on October 16, amendments to this bill were taken up. Mr. Caminetti offered an amendment providing that no Chinese person heretofore convicted of a felony in any court of the United States shall be permitted to register

<sup>24</sup>*Congressional Record*, Vol. 25, Part 2, p. 2440-2441.

<sup>25</sup>*Ibid.*, p. 2452. <sup>26</sup>*Ibid.*, p. 2457. <sup>27</sup>*Ibid.*, 2457.

<sup>28</sup>*Ibid.*, p. 2489. <sup>29</sup>Appendix, p. 407.

<sup>30</sup>*Congressional Record*, Vol. 25, Part 2, p. 2517.

under this act, but all such persons who are subject to deportation for failure or refusal to comply with the act of 1892 shall be deported from the United States upon appropriate proceeding now pending or hereafter instituted. It was agreed to.

Mr. Geary offered another amendment, which provided substantially as follows:

Upon complaint under oath made by any citizen of the United States before a United States judge stating that any Chinese person is unlawfully within the United States, a warrant of arrest shall be issued by the judge, and the said person shall be subjected to all of the provisions of this act and the act to which this is an amendment.

The term "merchant" shall have the following meaning: A merchant is a person engaged in buying and selling merchandise at a fixed place of business, which is conducted in his name, who in the period of being so engaged does not perform any manual labor except that which is necessary in the conduct of his business.

Any Chinaman applying for entry into the United States on the ground of having been a merchant in this country shall establish the fact by two credible witnesses other than Chinese that he was engaged as a merchant in the sense as defined above.

Order of deportation should be executed by the United States marshal of the district with all convenient dispatch; and pending the execution of the order, the Chinese person shall remain in custody and not be admitted to bail.

The certificate herein provided shall contain the photograph of the applicant, and a duplicate shall be filed in the Collector's office.

This amendment was agreed to by a vote of 120 to 10.<sup>31</sup> The substitute offered by Mr. Mahon was rejected, and the bill then passed the House on October 16, 1893, by a vote of 178 to 1.<sup>32</sup>

The bill was taken up for consideration in the Senate on November 1, when Senator Gray, from Delaware, opened the debate with a speech stating the occasion and necessity for the measure and urging its passage for the same reasons as given in the House. But he did not hesitate to say that the provisions following the first section did not entirely meet his approval. He should have preferred simply to extend the time and that the terms "merchants" and "laborers" should have been left to the courts to give their own interpretation and construction of them.<sup>33</sup>

Senator Hoar, of Massachusetts, regarded it as a great objection to the bill if the provision "that a man shall not be admitted to bail when he is in custody under an order of deportation" meant that he should not be admitted to bail on habeas corpus.<sup>34</sup>

Senator Palmer, of Illinois, objected to the bill and would not vote for it because it required the testimony of "at least one credible witness other than Chinese," which discriminated against a race as unworthy of credit.<sup>35</sup>

Senator Perkins, of California, asserted that California did not ask for extension; it was the administration that was asking for

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<sup>31</sup>*Congressional Record*, Vol. 25, Part 3, p. 2566. <sup>32</sup>*Ibid.*, p. 2566. <sup>33</sup>*Ibid.*, p. 3041. <sup>34</sup>*Ibid.*, p. 3042. <sup>35</sup>*Ibid.*, p. 3043.



it. He asked for a guaranty that this extension of six months would not again be defeated by a delay in registration of the Chinese and thought that photographing was not humiliating to Chinese.<sup>36</sup>

Senator Dolph, of Oregon, had no serious objection to the extension of time, but he did not like to have the United States government put in the attitude of voluntarily yielding to the defiant opposition of a class of aliens in this country.<sup>37</sup>

Mr. Davis, from Minnesota, was opposed to all the provisions of the Geary bill and the amendment under consideration and desired to see this "flagitious and ferocious legislation" expunged from the American statute book.<sup>38</sup>

Senator White, of California, advocated the adoption of the bill, because he found that the temper and desires of a majority of the American people were in favor of an extension.<sup>39</sup>

In the course of debate two amendments were proposed by Messrs. Hoar and Davis, and both were rejected; and the bill passed the Senate on November 2, 1893, and received the approval of the President of the United States the next day.

Viewed from the standpoint of the reactionary sentiment of the whole country against the harsh legislation of 1892, this amendatory measure seems to be the only legislation in Congress on the subject of Chinese immigration which was free from any political influence. As Mr. Hitt, from Illinois, said: "It is the only one that has been brought in not on the eve of an election."<sup>40</sup> Though it operated in a certain degree to relieve some of the harsh points of the Geary act in regard to the extension of time and the requirement of witnesses, yet since this was a patching of the old garment whose make was aimed to be uncomfortable for the Chinese, the mending, as it were, did not improve the fit. The only merit we can reasonably accredit to it is that it was an attempt at the amelioration of an evil.

The Chinese Minister was greatly disappointed when he received information of the passage of the bill. In a note of November 8, 1893, addressed to the State Department, thanking the United States government for the provision in the bill which stopped the proceedings in the prosecution of Chinese persons under the Geary law, the Chinese Minister says:

It was, of course, within the power of Congress to enact the Geary law and the amendment thereto, notwithstanding their harsh provisions; but I would suggest that if the repeal of the Geary law was an impossibility, the simple extension of the time for six months was the worst treatment anticipated by the Chinese people and by the Imperial government, and the additional objectionable provisions are a surprise and disappointment.<sup>41</sup>

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<sup>36</sup>*Congressional Record*, Vol. 25, Part 3, p. 3044. <sup>37</sup>*Ibid.*, p. 3050. <sup>38</sup>*Ibid.*, p. 3085. <sup>39</sup>*Ibid.*, p. 3090.

<sup>40</sup>*Congressional Record*, Vol. 25, Part 2, p. 2438.

<sup>41</sup>House Executive Document, Fifty-Third Congress, Second Session, 1893-94, Vol. 1, "Foreign Relations," p. 263.

## CHAPTER IX

### TREATY OF 1894

THOUGH the occasion for opening negotiations is not exactly known, for lack of documents on this subject, yet we read in the note of the Chinese Minister to the State Department, under the date of November 8, 1893, a suggestion for such a convention. As this is the only clue to this negotiation, a copious quotation from it is deemed necessary. After expressing his disappointment in the McCreary amendment, Minister Yang said in his note:

It appears, therefore, that our respective governments should immediately arrive at an amicable understanding as to future relations in regard to the grave and important questions involved.

In view of the facts, I would respectfully inquire whether it is now the intention of the United States government to permit these most serious questions to rest as a finality upon the legislation of Congress as it now exists, or whether the thought is entertained of further negotiation through a different source to the end that all difficulties between such nations may be permanently settled and their honor, dignity, and friendship maintained and preserved. . . .

If the government of the United States desires to entertain and consider any negotiation, . . . I shall willingly join in an interview upon that subject."<sup>1</sup>

In a dispatch from Secretary Gresham to Minister Denby at Peking we learn that the treaty was concluded and signed on March 17, 1894, by the plenipotentiary of China and himself.<sup>2</sup>

On April 17 Mr. Mitchell, of Oregon, presented a resolution in the Senate to consider the treaty with China in open session.<sup>3</sup> This resolution was laid before the Senate on May 7, when the galleries were cleared and the doors closed, and the Senate proceeded to the consideration of the treaty for more than six hours.<sup>4</sup>

In August, in a closed session, the treaty was again considered and approved on the same day.<sup>5</sup> Ratifications of the treaty were exchanged at Washington on December 7, 1894, and on the next day the President of the United States proclaimed the convention to the nation. The reason for this convention was fourfold, as stated in the preamble of the treaty. First, it was based upon the treaty of November 17, 1880, concluded for the purpose of regulating, limiting, or suspending the coming of Chinese laborers to

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<sup>1</sup>House Executive Document, Fifty-Third Congress, Second Session, 1893-94, Vol. 1, "Foreign Relations," p. 263.

<sup>2</sup>House Executive Document, Fifty-Third Congress, Third Session, 1894-95, Vol. 1, "Foreign Relations," p. 175.

<sup>3</sup>Senate Journal, Fifty-Third Congress, Second Session, p. 155.

<sup>4</sup>From 11:25 A.M. to 5:38 P.M.; *Congressional Record*, Vol. 26, Part 5, p. 4443.

<sup>5</sup>*Congressional Record*, Vol. 26, Part 8, p. 8448.

the United States. Secondly, because the Chinese government, in view of the antagonism and serious disorders in parts of the United States, caused by the presence of Chinese laborers, desired to prohibit such emigration. Thirdly, because the two governments desired to strengthen the bonds of friendship by cooperating in prohibiting such emigration and also in other ways. And, lastly, because the two governments were desirous of adopting reciprocal measures for the better protection of the citizens or subjects of each within the jurisdiction of the other.<sup>6</sup>

The text of the treaty is substantially as follows:

*Article 1.* The high contracting powers agree that for a period of ten years after the exchange of the ratifications of this convention the coming of Chinese laborers to the United States shall be absolutely prohibited.

*Article 2.* The preceding article shall not apply to the return of any registered Chinese laborer who has a lawful wife, child, or parents in the United States or property therein of the value of \$1,000 or debts of like amount. But such Chinese laborer, before leaving the United States, shall deposit with the Collector of Customs a full description in writing of his family or property or debts and shall be furnished by said Collector with a certificate of his right to return. And such right of return shall be exercised within one year from the date of leaving, except in cases of sickness or disability; the facts in which cases shall be reported and certified to the Collector. No Chinese laborer shall be permitted to enter the United States by land or sea without producing the return certificate.

*Article 3.* The provisions of this convention shall not affect the right at present enjoyed by Chinese subjects—officials, teachers, students, merchants, travelers for curiosity or pleasure—of coming to the United States and residing therein. To entitle such Chinese to admission into the United States, they may produce a certificate from their government or the government where they last resided. It is also agreed that Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States, subject to the regulations of the government of the United States.

*Article 4.* In pursuance of Article 3 of the Immigration Treaty of November 17, 1880, it is hereby understood and agreed that Chinese laborers or Chinese of any other class residing in the United States shall have the protection of their persons and property, all rights given by the laws of the United States to citizens or subjects of the most favored nation, excepting the right to become naturalized citizens.

*Article 5.* The United States government, having by the act of May 5, 1892, as amended by the act of November 3, 1893, required all Chinese laborers lawfully within the United States to be registered with a view to affording them better protection, the Chinese government will not object to the enforcement of such acts; and, reciprocally, the government of the United States recognizes the right of the government of China to enact and enforce similar laws or regulations for registration, free of charge, of all laborers, skilled or unskilled (not merchants, as defined by said acts of Congress), citizens of the United States in China.

*Article 6.* This convention shall remain in force for a period of ten years after the exchange of ratifications and shall remain for a like period after the expiration of the first ten years, if neither government shall have formally given notice of its final termination to the other.<sup>7</sup>

In view of the former negotiations on this subject, this convention reminds us of the abortive Treaty of 1888, which was

<sup>6</sup>House Executive Document, Fifty-Third Congress, Third Session, Vol. 1, "Foreign Relations," p. 177. <sup>7</sup>*Ibid.*, pp. 177-178.

concluded and signed by Secretary Bayard and Minister Chang Yen Hoon on March 12, 1888, was later amended by the Senate, was rumored to have been rejected by the Chinese government, and was finally defeated by the Scott act of October 1, 1888.

The first article differs from the same number of the former treaty only in the period of time of absolute prohibition of the coming of Chinese laborers to the United States, one providing for ten and the other for twenty years, with the Senate amendment left out, which provided that the prohibition should extend to the return of Chinese laborers who were not at that time in the United States, whether holding return certificates or not.

The second article is exactly the same as that of the former treaty, with amendment of the said article incorporated. The third and fourth articles of both treaties are precisely the same. The sixth and the last articles of both treaties are identical, save the difference in period of time, one being ten and the other twenty years. The material difference between these two conventions, excluding the point of time, is found in the fifth article of the respective treaties. The fifth article of this treaty agrees on the reciprocal right of registration, and that in the Treaty of 1888 provided for the payment of indemnity.

In the fifth article of the present treaty China seems to have been granted a reciprocal right. This, however, is a concession on the part of the United States government which is devoid of all practical application, because there are few American laborers in China and because the United States still reserves the right of registering all the other citizens, including the missionaries in China, and of furnishing the Chinese government annually registers or reports of these persons. Therefore the provisions of this article have only a formal value to China in the way of balancing the right of power and control over the aliens within her limits, as compared with the same power and control as exercised by the American government over the Chinese laborers in the United States.

Another significant feature of this treaty is its relation to the Scott act. As the Scott act was passed in default of the ratification of the pending Treaty of 1888, so now we see this treaty, containing almost the same provisions, proclaimed the law of the land, which virtually repealed the Scott act.

The second article of the present treaty is a refutation of the first two sections of the Scott act, which provide an absolute prohibition of the coming and return of Chinese laborers, regardless of their family relations or property in this country, an abolition of the system of issuing certificates of identity, and a cancellation of all outstanding certificates held by Chinese laborers in China. If the treaty repeals these two sections of the so-called Scott act, the remaining two sections of the act will go with them, as Section 3 specifies the penalties for violations of the provisions

of the act, and Section 4 repeals all the parts of the former acts which are inconsistent with this act.

This convention, though leaving the former acts as they were, went quite a little way toward liberalizing some of their provisions. This was not accomplished without opposition. From April 17 to July 11, 1894, when the treaty was awaiting the approval of the Senate, as many as thirty-eight memorials from different States were presented in the Senate remonstrating against the ratification of the treaty.<sup>9</sup> Just what passed in the Senate during the closed session on May 7, when the treaty was being considered, and on August 13, when the treaty was approved, is not available to our knowledge. Whatever may have been the controlling motive of the Senate which induced it to give its consent to this convention in the face of such opposition, one thing must not have escaped the observation of its members.

The Chinese government, at the suggestion of some of its officials, sent a communication to Minister Denby in December, 1893, to the effect that foreigners traveling in China, when applying for passports either at Peking or in the provinces, should be required to report their intended movements and while traveling should report their arrival, as well as their movements, in person to the subprefects or magistrates found *en route*.

Though the Chinese government declared that "in this matter it is actuated by a sincere desire to give protection to foreigners traveling under passports," yet it would not be unnatural for outsiders to interpret it as a retaliative measure. For the alleged good intention of the American government to give adequate protection to Chinese in the United States by having them registered was not regarded as altogether a friendly act. Moreover, the Viceroy of Nanking refused to permit over fifty American missionaries to stay outside the city during the summer months, claiming that outside the city their lives would be in danger and that they would be beyond the reach of his protection, although the American Minister, as well as those missionaries themselves, well knew that no such danger existed.<sup>10</sup>

When war broke out in July, 1894, between China and Japan, a strong hostile feeling was manifest among the people toward all foreigners. Minister Denby, in a note to the State Department, says that "there prevailed among the people many rumors of an anti-foreign character"; that "hostility to Japan seemed inclined to become hostility to foreigners in general."<sup>11</sup>

~~This was the state of affairs in China when the treaty was concluded and approved. So we find given in the preamble as reasons~~

<sup>9</sup>Senate Journal, Fifty-Third Congress, Second Session.

<sup>10</sup>House Executive Document, Fifty-Third Congress, Third Session, Vol. 1, "Foreign Relations," p. 155.

<sup>11</sup>Denby to Gresham, *ibid.*, p. 142, dated April 23, 1894.

<sup>12</sup>*Ibid.*, pp. 130, 150; notes of June 27 and September 30, 1894.

for the necessity of this convention the strengthening of friendship between the two nations and the better protection of citizens or subjects of each within the jurisdiction of the other.

Much credit is due the administration, whose head was once obliged to approve a bill (Scott bill) when a treaty was still pending, because it now had the honor of causing a similar convention to be made public, "to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof."<sup>12</sup>

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<sup>12</sup>House Executive Document, Fifty-Third Congress, Third Session, Vol. 1, "Foreign Relations," p. 179.

## CHAPTER X

### EXTENSION OF THE EXCLUSION LAWS TO HAWAII AND THE PHILIPPINE ISLANDS

FROM 1894 to 1902 many attempts were made to modify, repeal, or reenact the laws on the question of Chinese immigration; but no laws were passed except several measures which were enacted to extend the Chinese exclusion to Hawaii and the Philippine Islands. Meanwhile the inefficient working of the exclusion laws had called for several proposals of amendment. The Secretary of the Treasury on April 30, 1895, transmitted to the House of Representatives a draft to amend the act of November 3, 1893.

The draft provides that "in all cases where proceedings are taken affecting the right of Chinese to enter or remain in the United States, the testimony of other than Chinese persons is required. Persons making false affidavits in regard to the admission or identification of Chinese shall be amendable to the existing laws prescribing punishment for perjury." This was made necessary because, in the opinion of the Secretary of the Treasury, in many instances the Chinese, applying for admission on the ground that they were born in this country, presented testimony of Chinese persons who certified to this fact. But in a case where admission was refused, the United States commissioner to whom the case was brought held that the testimony of Chinese witnesses standing uncontradicted was sufficient to establish the claim of the applicant that he was a native of California. And in view of the increase in the number of applicants from China for admission to this country on this ground and of the difficulties experienced by officers of the Treasury Department in verifying and controverting the testimony of Chinese witnesses, he proposed this legislation to correct a practice which in many particulars nullified the intent of the laws relating to the exclusion of Chinese.<sup>1</sup>

On March 7, 1898, the Secretary of the Treasury transmitted to the Senate a draft proposing an amendment to the act approved November 3, 1893. The said amendment makes the term "laborer" include Chinese seamen, stewards, or cooks on vessels, and provides that these classes of persons may be landed, to remain only for a reasonable period, upon giving a bond of \$300 to the Customs Collector, to be forfeited to the United States in case such person should fail to reship or to depart from the United States within a period of three months. This was proposed, as the Secretary held, as a necessary measure to prevent the irregular landing of such persons.<sup>2</sup> This measure was referred to the Com-

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<sup>1</sup>House Document No. 372, Fifty-Fourth Congress, First Session, Vol. 61.

<sup>2</sup>Senate Document No. 182, Fifty-Fifth Congress, Second Session, Vol. 11.

mittee on Foreign Affairs March 9, from which Mr. Hitt reported it back on June 27, 1898, as House Bill No. 10829.<sup>3</sup>

On February 15, 1901, the Secretary of the Treasury transmitted to the House the draft of a bill proposed by the Commissioner General providing that before the Chinese were landed from any vessel the Collector should proceed to examine such passengers by comparing their certificates with the list of passengers. No passenger should be allowed to land in violation of the law, but should be returned to China; and the Collector should in person decide all questions in dispute with regard to the right of entry, his decisions to be subject to review only by the Secretary of the Treasury. This was necessitated, as the Commissioner General said, by Chinese who, being refused admission, secured admission by changing their destination to foreign contiguous territory and thus entered at the comparatively unguarded points.<sup>4</sup>

During this period the question of the annexation of Hawaii before Congress had headed off the agitation of the Chinese question at home. In the third session of the Fifty-Fifth Congress, 1898-99, and the first session of the Fifty-Sixth Congress, 1899-1900, several bills were introduced to the effect of extending the laws of the United States regulating Chinese immigration to the Hawaiian Islands. By the joint resolution of July 7, 1898, providing for annexing the Hawaiian Islands to the United States, Chinese immigration thereto was regulated by the clause:

That there shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now, or may hereafter be, allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.<sup>5</sup>

The Chinese Minister at Washington, on December 12, 1898, addressed a note to the Secretary of State, Mr. Hay, calling his attention to the fact that the enforcement of this joint resolution would result in uncalled-for discrimination and manifest injustice to over twenty thousand Chinese who had been established on those islands and had acquired various rights of person and property under the laws of the former government. This resolution suddenly suspended some of the most important of those rights; for instance, they had been permitted to visit their native land and return, to bring to the island their families, to send their children home to be educated and their young men to be trained in mercantile pursuits, and to come and go freely as their business or convenience required. He held that, since there was no competition between Chinese and white labor, it seemed unnecessary and unreasonable to extend the exclusion laws of the

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<sup>3</sup>See House Report No. 1628, Vol. 6.

<sup>4</sup>House Document No. 472, Fifty-Sixth Congress, Second Session, Vol. 89.

<sup>5</sup>Supplement of the Revised Statutes of the United States, Vol. 2, 1892-1901, p. 896.



United States to those islands and asked whether it was the intention of Congress to make the discrimination of declaring that Chinese were more objectionable or dangerous than the Japanese, the Malays, the Siamese, or other Asiatic peoples.<sup>6</sup>

In another note on February 18, 1899, the Chinese Minister complained of the fact that there were about two hundred Chinese holding permits to return, issued by the Hawaiian government, which the United States was bound to recognize when she assumed the obligations of the Hawaiian government by annexing the islands to the United States, and he insisted that the Chinese government only asked that the immigration of Chinese into the territory of the United States be placed on a common footing with other nations.<sup>7</sup>

On March 11, 1899, Secretary Hay replied that, in the opinion of the Attorney-General, the provisions of the joint resolution should be so construed as to apply to actual additional immigration—namely, to the coming of Chinese into the islands for the first time and not to the return of Chinese who had lawful residence there. It was also held that Chinese women and children presenting permits issued under the laws of Hawaii might be admitted to those islands.<sup>8</sup>

On April 30, 1900, the act to provide a government for the territory of Hawaii was approved, in which the Chinese residing therein were required to be registered by the following provision:

*Section 101.* That the Chinese in the Hawaiian Islands when this act takes effect may within one year thereafter obtain certificates of residence as required by an act "to prohibit the coming of Chinese persons into the United States," approved May 5, 1892, and amended by the act of November 3, 1893, and until the expiration of said year shall not be unlawfully in the United States, if found therein without such certificates. *Provided,* however, that no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands.<sup>9</sup>

While the protest against the extension of the exclusion laws to Hawaii proved futile, the Philippine Islands were ceded to the United States by Spain (1898) and were immediately put under military administration. On February 3, 1899, Minister Wu Ting-Fang addressed a note to the State Department, inquiring about the policy the government of the United States would adopt in dealing with the Chinese immigration to the Philippines, as the authority of the Spanish government had been withdrawn, and the United States military authorities were in possession of Manila. This question was brought up with a view to securing a recognition of the just rights of Chinese residents in those is-

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<sup>6</sup>House Document, Fifty-Sixth Congress, First Session, Vol. 1, "Foreign Relations," pp. 202-203. *Ibid.*, p. 205. *Ibid.*, p. 207.

<sup>7</sup>Supplement of the Revised Statutes of the United States, Vol. 2, 1892-1901, p. 1162.

lands, when the United States government should come to legislate upon their future administration.<sup>10</sup>

Secretary Hay made the reply that the subject was under careful consideration and refused to make a definite answer to the inquiry until the Philippine Commission had investigated the condition of the islands.<sup>11</sup>

From a State Department note of August 18, 1899, Minister Wu learned that the Chinese exclusion act was put in operation in the Philippines by Major General Otis, which confirmed the telegram from the Chinese Consul General at Manila giving information of this fact. The note also stated that the War and Treasury Departments were of the opinion that the enforcement of the Chinese act was incident to the military administration of the Philippine Islands during a state of hostilities.<sup>12</sup>

The order issued by Major General Otis on September 26, 1898, contains substantially the following provisions:

The laws of the United States prohibiting the entrance of Chinese will be enforced here.

The exceptions are:

Chinese laborers formerly residents in Manila and temporarily absent therefrom will be allowed to return upon proper proof of such residence by presentation of Spanish credula or certificate of American consul.

The closest scrutiny of such certificates is enjoined, and no Chinaman, of whatever nationality, will be permitted by the Collector except upon the conclusive proof of previous residence.

There will be exempted from the above restrictions the parties named in the convention of 1894 between the United States and China—to wit, Chinese officials, teachers, students, merchants, and travelers for curiosity or pleasure. The coming of these classes will be permitted upon the producing of a certificate from their government.

All Chinese entering the port shall register at the office of the Chinese consul.

The following regulations shall govern the return of Chinese laborers formerly residents of Manila:

Every such laborer, before his departure, will report to the Collector his name, age, physical marks or peculiarities for the purpose of identification.

Said Collector will furnish to every such departing Chinese a certificate bearing the facts as shown in the registry book.

The certificate herein provided shall entitle such Chinese laborer to return and reënter the port upon producing the same to the Collector.<sup>13</sup>

The Chinese Minister protested against this measure upon three grounds: (1) Because it was not warranted as a military measure, the Chinese population there having never been inimical to the occupation of these islands by the United States. (2) It was a departure from the announced policy of the President—*i. e.*, to leave the status of the newly acquired possessions unchanged. (3) It was a great injustice to a numerous body of Chinese subjects

<sup>10</sup>House Document, Fifty-Sixth Congress, First Session, "Foreign Relations," Vol. 1, pp. 207-208.

<sup>11</sup>*Ibid.*, p. 209, February 6. <sup>12</sup>*Ibid.*, p. 209. <sup>13</sup>*Ibid.*, pp. 211-212.

and would disturb the friendly relations between the two countries.<sup>14</sup>

On May 7, 1900, Minister Wu again brought the matter to the attention of the Secretary of State by referring to his former notes to the State Department on this subject, feeling confident that if Congress were in possession of all the information on the subject it would enact such measures as would be satisfactory to all concerned.<sup>15</sup>

Therefore Secretary Hay, in compliance with the request of the Chinese Minister, transmitted copies of his former notes to Congress.<sup>16</sup> This matter seemed to be laid to rest after the lengthy note to the State Department addressed by Minister Wu on December 10, 1901, and later we see the restriction of Chinese immigration to the Philippines incorporated in the exclusion act of 1902.<sup>17</sup>

In regard to this extension of the exclusion of Chinese to Hawaii and the Philippines, we have a statement from Hon. Chester Holcombe, formerly Secretary of the American Legation at Peking and a member of the Chinese Immigration Commission of 1880, who says:

It is difficult to discover either reason or excuse for the extension of the Chinese exclusion act to Hawaii and the Philippine Islands. In so doing Congress has deprived the employers in the former territory of their best and only sufficient source of labor, against their earnest and repeated protest and petition, and brought the development of the resources of the islands to a standstill.<sup>18</sup>

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<sup>14</sup>House Document, Fifty-Sixth Congress, First Session, Vol. 1, "Foreign Relations," p. 214, September 12, 1899.

<sup>15</sup>House Document, Fifty-Sixth Congress, Second Session, Vol. 1, "Foreign Relations," p. 402.

<sup>16</sup>*Ibid.*, p. 403, May 24, 1900.

<sup>17</sup>For Mr. Wu's note, see House Document, Fifty-Seventh Congress, First Session, Vol. 1, "Foreign Relations," pp. 75-97.

<sup>18</sup>The *Outlook*, Vol. 81, 1905, "Chinese Exclusion and the Boycott," p. 1072.

## CHAPTER XI

### RESTRICTION LEGISLATION OF 1902

AFTER the lapse of half a decade's quiet working of the exclusion laws, the smoldering embers of the Chinese question were again fanned into flame among the political circles.

In the two reports submitted to the Senate in 1897 by the Attorney-General<sup>1</sup> and by the Secretary of the Treasury<sup>2</sup> the illegal entry of Chinese claiming to be merchants and minor children born in this country and the collusion of the customs officers charged with the enforcement of the exclusion laws were set forth with very convincing and alarming effect.

In the year 1900 the American Federation of Labor, at its convention in Kentucky, adopted a resolution that, in view of the increasing danger threatening American labor, Congress should strengthen and reenact the Chinese exclusion laws, including in its provisions all Mongolian labor.<sup>3</sup>

The Chinese Exclusion Convention held in San Francisco on November 22, 1901, sent a memorial to the Senate<sup>4</sup> setting forth "some reasons for Chinese exclusion."

As an evidence of the high pitch of antipathy in certain parts of this country, there were introduced in the first session of the Fifty-Seventh Congress twenty bills for the exclusion of Chinese, two hundred and forty-seven petitions were received in the House favoring the general exclusion of Chinese from the insular possessions, and sixteen petitions to exclude all Asiatics.<sup>5</sup>

On January 16, 1902, Senator Mitchell, of Oregon, introduced a bill (Senate Bill No. 2960) to prohibit the coming into, and to regulate the residence within, the United States, its territories, all possessions and all territory under its jurisdiction, and the District of Columbia, of Chinese persons and persons of Chinese descent. The bill contained fifty-seven sections, which, as later amended, are, briefly, as follows:

Section 1. The coming of Chinese laborers is absolutely prohibited except under certain specified conditions.

Section 2 prohibits the coming of Chinese laborers from any insular territory to the mainland territory of the United States.

Section 3 defines the term "laborer" to mean both skilled and unskilled manual laborers.

Section 4 provides the right to enter and remain in the United States to be restricted to Chinese officials, teachers, students, merchants, and travelers for curiosity or pleasure.

Section 5 defines the term "official."

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<sup>1</sup>Senate Document No. 120.   <sup>2</sup>Senate Document No. 167.

<sup>3</sup>Quoted from Senate Document, Sixty-First Congress, Third Session, Vol. 21, p. 79.

<sup>4</sup>Senate Document No. 137, Fifty-Seventh Congress, First Session.

<sup>5</sup>See Senate and House Journals, and *Congressional Record*, and also Senate Document No. 137, p. 79.

Section 6 defines the term "teacher."

Section 7 defines the term "student."

Section 8 defines the term "merchant."

Section 9 defines the term "traveler."

Section 10 allows the return of a Chinese laborer having wife, child, or parent in the United States or property or debts of the value of \$1,000.

Section 11 requires the laborer entitled to return to apply to the Treasury officer of his district one month before departure.

Section 12 requires a certificate of residence of a Chinese laborer in the insular territory of the United States within six months.

Section 13 provides for issuance of new certificates in case of loss or destruction.

Section 14 requires the exempted classes of Chinese to produce certificates of their government, viséed by the United States diplomatic representative, for admission.

Section 15 is a duplicate in principle and in structure of the provision in Article III of the Treaty of December 8, 1894, and of Section 6 of the Act of July 5, 1884.

Sections 16, 17, and 18 specify the facts to be contained in such certificates and the examination of the facts by the United States diplomatic representative and the way of delivering the certificate to the person intended.

Section 19 provides that this certificate be *prima facie* evidence of the facts set forth therein.

Section 20 presumes any Chinese persons lawfully within the United States without such certificate to be laborers in any proceedings to prove their status.

Section 21. This bill does not prohibit the entry of the wife and children of a person lawfully in the United States, as mentioned in Section 4.

Section 22 excepts from the operation of this act Chinese diplomatic and consular officers and their attendants and servants.

Section 23 provides examination and comparison of certificates at port or border of the United States.

Section 24 demands a list of Chinese passengers from masters of vessels when arrived.

Section 25 demands a list of Chinese passengers from the conductor on railways before crossing the border.

Section 26 provides for transit privilege.

Section 27 requires Chinese persons to be detained on board the vessel or at port until final decision of right of entry.

Section 28. Chinese persons finally refused admission shall be returned to the country of which they are subjects.

Section 29 deems it a felony on the part of agent or officer of transportation to aid, permit, or connive at the escape of Chinese in detention.

Section 30 provides for the forfeiture of the vessel in case of violation of this act.

Section 31 deems it a felony to bring Chinese persons into the United States otherwise than as provided by this bill.

Section 32. Any Chinese person found unlawfully in the United States shall be arrested and deported.

Section 33. Any Chinese person entering the United States without permission of the Treasury officer shall be deported.

Section 34 defines what is meant by deportation.

Section 35 vests the local judges with judicial functions of the United States judges where no Federal court is established.

Section 36. Chinese persons violating any of the provisions of this act shall be deported.

Section 37. Forgery of certificates shall be deemed a felony and punished by a fine of \$1,000 to \$5,000 or imprisonment of from one to five years.

Section 38 excepts penalties from those vessels brought within the jurisdiction of the United States by distress or stress of weather.

Section 39 requires bond of the master of a vessel employing Chinese in its crew on condition that the said Chinese persons shall not be permitted to land.

Section 40. Chinese persons of the exempted class who become laborers after admission forfeit the privilege of remaining.

Section 41. The Commissioner General shall keep a record of birth and parentage of Chinese in the United States.

Section 42. No certificate thus issued shall be pawned, sold, or transferred.

Section 43. The return certificate in two years after date of departure shall be canceled.

Section 44. No State court or court of the United States shall admit Chinese to citizenship.

Section 45. The Commissioner General is authorized to enforce this act.

Section 46. The decision of the Treasury officer shall be final.

Section 47. Appeal must be filed within five days after the making of the decision.

Section 48. An appeal may be taken from the decision on appeal of the United States District Court to the United States Circuit Court of Appeals within five days.

Section 49. In cases of appeal a transcript of testimony on the former hearing of the case must be transmitted to courts of appeal.

Section 50. In cases of appeal Chinese persons shall remain in custody.

Section 51. The term "United States" includes both continental and insular territory under the jurisdiction of the United States.

Section 52. "Chinese" and "Chinese persons" include both male and female.

Section 53. Any violation of this act wherefor the punishment is not otherwise provided shall be punished by a fine of \$1,000 or one-year imprisonment.

Section 54. No certificate of status from a foreign government which is not restricting the free immigration of Chinese shall have any force or value.

Section 55. Certificates and papers issued shall be marked "Original," "Duplicate," "Triplicate."

Section 56. Provisions of this bill shall not be suspended at any time, even in case of fair or exposition.

Section 57 repeals all acts or parts of acts inconsistent with this act.

This bill was proposed, as Senator Mitchell reported, to be a policy based upon the doctrine of general welfare, not only for the protection of the American laborer, but also for the protection of American institutions; and it was an embodiment of those principles in the existing legislation, with such additions and elaborations as the experience in the administration of the existing law by the Treasury Department, the Department of Justice, and the courts had suggested as being wise, important, and necessary. It did not in any respect invade any treaty obligations of this country with China. The only provision which differed from those of the existing law was in the first section of this bill, which prohibited without limit of time the coming of Chinese laborers to the territory of the United States and to all territory under its jurisdiction.\*

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\**Congressional Record*, Fifty-Seventh Congress, First Session, Vol. 35, Part 4, pp. 3654-3655.

While this bill was under consideration Mr. Kahn, from California, introduced in the House on January 18, 1902, a bill (H. R. 9330), which was reported back March 26 by Mr. Perkins from the Committee on Foreign Affairs, substituted by House Bill No. 13031. There was also reported from the minority of the committee a substitute for this bill, whose provisions were more drastic than those of House Bill No. 13031.<sup>7</sup>

Mr. Clark, from Missouri, recommended this substitute on the ground that it excluded Chinese laborers both by land and by sea<sup>8</sup> and objected to the present bill because it struck out the seventeenth section of House Bill No. 9330, which provided that before the certificate of status should be viséed by the diplomatic representative of the United States, or before it should be issued by other officers of the United States in the case of exempted classes, there should be a careful investigation of status.<sup>9</sup>

House Bill No. 13031 was successively considered on April 4, 5, and 7; and, after slight amendment, it was passed on the last-mentioned date. It was sent to the Senate the next day and was referred to the Committee on Immigration, from which Mr. Fairbanks reported it back on the 9th without amendment.<sup>10</sup>

At the same time the Senate still went on considering its own bill (Senate Bill No. 2960), which was similar to the House bill. On April 4 Senator Platt, from Connecticut, proposed an amendment to this bill, which read:

Strike out all after the enacting clause and insert: "That all laws now in force prohibiting and regulating the coming of Chinese persons and persons of Chinese descent into the United States and the residence of such persons therein be, and the same are hereby, extended and continued in full force and effect until December 7, 1904, and so long as the treaty between China and the United States, concluded on March 17, 1894, and proclaimed by the President on December 8, 1894, may be continued in force by virtue of the extension thereof, in accordance with the provisions for such extension therein contained."<sup>11</sup>

On April 5 Senator Dillingham proposed twelve amendments whose nature was largely in favor of the reënactment of the existing law, especially the Geary law.<sup>12</sup> These amendments were sharply criticized by the Chinese Exclusion Commission appointed by the Governor of California.<sup>13</sup>

The Platt amendment was criticized by this commission in the same tone. It objected to the amendment, first, because it did not carry forward the statutory provisions of the existing law at that time being enforced; secondly, because the amendment ignored the problems presented by the Philippines; thirdly, it ig-

<sup>7</sup>For the substitute, see *Congressional Record*, Fifty-Seventh Congress, First Session, Vol. 35, Part 4, p. 3784.

<sup>8</sup>See Section 39 of substitute.

<sup>9</sup>*Congressional Record*, Fifty-Seventh Congress, First Session, Vol. 35, Part 4, pp. 3681-3682.

<sup>10</sup>*Ibid.*, p. 3871. <sup>11</sup>*Ibid.*, p. 3647. <sup>12</sup>*Ibid.*, p. 3708; Senator Dillingham's speech, p. 3893. <sup>13</sup>*Ibid.*, pp. 4088-4091.

nored the failure of the present law to protect the American seamen from competition with Chinamen; fourthly, it ignored the fact that the present exclusion laws were badly scattered, containing living and dead provisions of acts of 1882, 1884, 1888, 1892, the Treaty of 1894, and portions of acts relative to Hawaii of 1894 and 1900; and, lastly, it ignored the defects discovered in the present laws since 1893.<sup>14</sup>

On April 16 Senator Platt offered another amendment as a substitute to the Senate bill. It contained three sections, substantially as follows:

*Section 1.* All laws in force prohibiting and regulating the coming and residence in the United States of Chinese persons shall be extended and continued, including the act of September 13, 1888, until December 7, 1904, or as long as the treaty of March 17, 1894, shall continue in force, and the said laws shall apply to all territory under the jurisdiction of the United States; provided that this shall not apply to the transit of Chinese laborers from one island to another of the same group.

*Section 2.* In case the treaty of March 17, 1894, be terminated, these acts shall remain in force until a new treaty shall be concluded.

*Section 3.* The Secretary of the Treasury is empowered to make rules and regulations necessary for the execution of the provisions of these acts.<sup>15</sup>

Afterwards this substitute was amended by an insertion from Senator Mitchell:

That in any insular territory where the United States has not established Federal courts nor provided Federal marshals the judges of local courts shall be vested with the judicial functions of the United States judges, and the local officers shall be vested with the executive functions of United States marshals.<sup>16</sup>

And after the phrase "not citizens of the United States" was inserted after the word "laborers" in Section 1 (proposed by Senator Carmack), the Platt substitute was adopted and passed April 16 by a vote of 76 to 1 (Senator Hoar), 11 not voting.<sup>17</sup>

On April 17 House Bill No. 13031 was substituted by the Platt amendment, which by this time had been enlarged since it passed the Senate the day before by some other insertions not inconsistent with the intent of the main provisions of the act. It made provision for the admission of exhibitors and their necessary assistants to the fair, or exposition (as Section 4), and it specifically required the registration of Chinese laborers lawfully in any insular territory (Hawaii excepted) of the United States who should obtain a certificate of residence within one year after the passage of this act (as Section 5).<sup>18</sup>

The House nonconcurred in the Senate amendment and requested a conference. Therefore two conferences were held on the disagreeing vote; and finally, on April 28, the conference report was submitted before both houses<sup>19</sup> in which both houses agreed to the amendment made in conference:

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<sup>14</sup>*Congressional Record*, Vol. 35, Part 4, pp. 4091-4092. <sup>15</sup>*Ibid.*, Part 5, p. 4240.

<sup>16</sup>*Ibid.*, p. 4251. <sup>17</sup>*Ibid.*, p. 4252. <sup>18</sup>*Ibid.*, p. 4307. <sup>19</sup>*Ibid.*, pp. 4761, 4792.



That all laws now in force prohibiting and regulating the coming to, and the residence in, the United States of Chinese persons, including Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the act of September 13, 1888, are extended and continued, and until otherwise provided by law the said laws shall also apply to the island territory under the jurisdiction of the United States; provided that this shall not apply to the transit of Chinese laborers from one island to another of the same group.

*Section 2.* That the Secretary of the Treasury is empowered to make rules and regulations and to appoint agents necessary for the execution of these laws.

*Section 3.* Nothing in this act shall be construed to prevent or hinder any foreign exhibitor from bringing into the United States under contract mechanics, artisans, agents necessary for the installing or conducting the exhibits in any fair or exposition.

*Section 4.* It shall be the duty of every Chinese laborer rightfully in any insular territory under the jurisdiction of the United States (Hawaii excepted) to obtain within one year after the passage of this act a certificate of residence, and he shall be deported upon failure to obtain the same. And the Philippine Commission is authorized to make regulations necessary for the enforcement of this section in the Philippine Islands; provided that, if the Philippine Commission shall find it impossible to complete the registration within one year, it is authorized to extend the time not exceeding one year.

This being concurred in by both houses, they approved and signed it on April 29, 1902.

After reviewing the proceedings of this legislation, it must be said that, with reference to the exclusion of Chinese laborers from the United States, no new harsh provisions had been added to this reenactment of the existing laws. But since it extended the application of these laws to all insular territory under the jurisdiction of the United States, this act cannot but be regarded in this respect as harsher and more stringent than the preceding acts. This may be perceived and realized in the light of the former status of Chinese in the insular territories.

The working and living conditions of the Chinese people in Hawaii and the Philippines previous to the annexation of these territories to the United States had been such as to make this sudden restriction very inconvenient for the movements of the Chinese and detrimental to the prosperity of those islands. The evident reason was because Chinese labor was necessary for Hawaii, and there was no competition with either white or native labor, and also because Chinese had become essential to the subsistence of the Philippines on account of their proximity to China and long centuries of free intercourse.

In the lengthy note of Minister Wu to the State Department, under the date of December 10, 1901, he called the Secretary's attention to these facts by quoting from the annual report of the Territorial Governor of Hawaii in regard to the employment of a large number of Chinese upon the plantations:

It may safely be said that such action never has, does not now, and never will interfere with either American skilled or unskilled labor. . . . It has been demonstrated beyond doubt that the unskilled labor upon the plantations must be furnished by other than Americans. This would be

true even if the large estates were divided into small holdings. It is simply a physical impossibility for the Anglo-Saxon satisfactorily to perform the severe labor required in the sugar fields. This being true, Hawaii is entitled to legislation favorable to its greatest prosperity.<sup>20</sup>

With reference to the Philippines, he cited the statements of three travelers and officials. Dr. Antonio Morga, in his works on the Philippines, written in the sixteenth century, says of Manila: "It is true that the town cannot exist without the Chinese, as they are workers in all trades and business and are very industrious." Juan de la Concepcion, a writer and a traveler in the seventeenth century, says: "Without the trade and commerce of the Chinese these dominions could not have subsisted." In the report of Consul General Wildman, the commercial representative of the United States, he says: "Broadly speaking, there is not an industry in the islands [Philippines] that will not be ruined if Chinese labor is not permitted."<sup>21</sup>

In the course of debate in both houses on this point numerous arguments were advanced; but the tenor of these seems to have been sounded by Senator Mitchell, in justification of this provision, who contended that this was new legislation to exclude Chinese laborers from the insular territories. But as the great purpose of the Chinese exclusion legislation was to protect American labor from the ruinous competition with the cheap labor of Asia, "it would be a rather strange commentary upon the prescience and consistency of our nation if, while striving strenuously to close the door against Chinese laborers from China, we at the same time left the door wide open to the hundreds of thousands of Chinese laborers in the Philippine Archipelago (numbered at 1,750,000)." As to the constitutionality of this measure, he did not seem to be very certain about it, although he said:

As to the constitutionality of an act restricting the privilege of locomotion in this respect, as applicable to this class of persons, I have no serious doubt, although that may possibly be questioned by some. . . . In any event, Congress has committed itself fully to this doctrine in its legislation in regard to Hawaii.<sup>22</sup>

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<sup>20</sup>House Document, Fifty-Seventh Congress, First Session, Vol. 1, "Foreign Relations," page 92.

<sup>21</sup>House Document, Fifty-Seventh Congress, First Session, Vol. 1, "Foreign Relations," p.94. Report to Secretary of State, November 22, 1898.

<sup>22</sup>*Congressional Record*, Fifty-Seventh Congress, First Session, Vol. 35, Part 4, p. 3655.

## CHAPTER XII

### RESTRICTION LEGISLATION OF 1904

On January 24, 1904, the Chinese government sent a note to Minister Conger in Peking notifying the government of the United States that, in pursuance of the provisions of Article 6 of the Treaty of 1894, the Chinese government gave a formal notice to terminate the said convention upon the expiration of the period of ten years, which would have been completed on December 7, 1904. The note also suggested some satisfactory adjustment of the question by a new treaty to be negotiated in view of the friendly relations which had always existed between China and the United States.<sup>1</sup> Several measures on the Chinese question were introduced in Congress,<sup>2</sup> but they were either tabled or referred.

On April 13, 1904, Mr. Hemenway, of Indiana, from the Committee on Appropriations, introduced a bill (H. R. 15054) to supply deficiencies in the appropriations for the fiscal year ending June 30, 1904, for prior years, and other purposes.<sup>3</sup>

In the course of debate on this bill Mr. Hitt, of Illinois, proposed an amendment which contained seven sections:

The first section (named Section 3 of bill): That Section 1 of the act of Congress, approved April 29, 1902, entitled "An act to prohibit the coming into, and to regulate the residence within, the United States, its Territories, and all the territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent," is hereby amended so as to read as follows:

All laws in force on the 29th of April, 1902, regulating, suspending, and prohibiting the coming of Chinese persons or persons of Chinese descent into the United States, and the residence of such persons therein, including Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the act entitled "An act to prohibit the coming of Chinese laborers into the United States," approved September 13, 1888, be, and the same are hereby, reënacted, extended, and continued without modification, limitation, or condition, except as hereinafter specifically provided; and said laws shall also apply to the island territory under the jurisdiction of the United States and prohibit the immigration of Chinese laborers, not citizens of the United States, from such island territory to the mainland territory of the United States, whether in such island territory at the time of cession or not, and from one portion of said island territory of the United States to another portion of said island territory. Provided, however, that said laws shall not apply to the transit of Chinese laborers from one island to another island of the same group; and any island within the jurisdiction of any State or District of Alaska shall be considered a part of the mainland under this section."

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<sup>1</sup>House Document No. 1, Fifty-Eighth Congress, Third Session, Vol. 1, "Foreign Relations," pp. 117-118.

<sup>2</sup>H. R. 14619, introduced March 31; H. R. 15167, introduced April 16; and Senate Bill No. 5343, April 1.

<sup>3</sup>*Congressional Record*, Fifty-Eighth Congress, Second Session, Vol. 38, Part 5, p. 4784.

The next section, or the fourth, provides that the laws thus reenacted shall be so construed as to permit the entrance into, and residence within, the United States and its territory of persons of Chinese descent who are citizens of the United States by reason of birth and those who are specifically granted by law such privilege.

The next, or fifth, section: The words "Chinese persons" or "persons of Chinese descent" shall be construed to mean persons descended from an ancestor of Mongolian race who is now, or was at any time, a subject of the Emperor of China; and in any proceeding or examination relating to exclusion or expulsion of such persons, the statement under oath made by the immigration officer that he believes such person to be Chinese shall constitute sufficient proof thereof, unless such person by affirmative evidence shall prove otherwise.

The next, or sixth, section: The word "laborers" shall be construed to include persons of Chinese descent not specifically permitted by law to enter or remain in the United States; and Section 2 of the act of November, 1893, is hereby repealed.

The seventh section: The officers of the government shall have the same right to decide upon the questions on claims to citizenship of persons of Chinese descent as upon questions of admission or exclusion.

The eighth section: Provisions of the act of March 3, 1903, regulating the immigration of aliens shall also apply to alien Chinese persons in the United States.

The ninth section: Section 13 of the Chinese exclusion act of September 13, 1888, shall be modified so as to give an appeal in behalf of either the United States or the Chinese persons within ten days from the judgment of the Commissioner of the United States Court to the District Court of the United States, and to permit further appeal in behalf of the government alone to the Circuit Court of Appeals or the Supreme Court of the United States; but the action of the District Court, if adverse to the person of Chinese descent, may be reviewed by the Supreme Court on application within sixty days.

The tenth section: Sections 2 and 3 of the act of April 29, 1902, are amended by striking out the words "Secretary of the Treasury" and inserting in lieu thereof the words "Secretary of Commerce and Labor," who shall possess and exercise all power and authority relating to the admission or exclusion of persons of Chinese descent.

The eleventh section: That the Commissioner General of Immigration, with the approval of the Secretary of Commerce and Labor, may relieve from the operation of these laws any person of Chinese descent who came to the United States prior to December 8, 1894, or who has rendered the government meritorious services.<sup>4</sup>

The reason for offering this amendment was, as Mr. Hitt contended, because this was the moment to secure favorable action by incorporating it in the appropriation bill. Moreover, upon the return of Minister Wu there was an exigency created by the repudiation by the Chinese government of the Treaty of 1894. Then Mr. Hitt analyzed briefly the provisions of the amendment. The first section (named three in the bill) was to meet an emergency which had recently arisen (the repudiation of the treaty). The next section was designed to meet a construction which had been put upon former acts by some judges, and which had long been held by the Department of Justice and many courts, that all Chinese, except those who were given the right of entry by the terms of the law, should be excluded. The next section was

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<sup>4</sup>Quoted substantially from *Congressional Record*, Vol. 38, Part 5, p. 5031.

for the purpose of guiding the officers, in the execution of the law, by a sharply drawn definition of "Chinese persons" or "persons of Chinese descent."

The sixth section was to amend the laws, providing exclusion of both skilled and unskilled laborers, so as to include in the word "laborer" all Chinese not specifically granted permission to enter. The seventh section gave the United States officers a right to decide upon the questions of fact upon which rested the claim made by Chinamen to citizenship. The eighth section undertook to stop the leak left in the immigration law of March 3, 1903 (Section 36 of this act provides that this act shall not be construed to repeal, alter, or amend existing laws relating to immigration or exclusion of Chinese persons, etc.), so as to keep out Chinese persons having contracted contagious diseases who are otherwise admissible. The ninth section was to give the United States an appeal, not now allowed, from the decisions of the commissioner. By the tenth section the duties of the administration of exclusion laws were transferred from the Secretary of the Treasury to the Secretary of Commerce and Labor, in compliance with recent readjustment of duties upon the creation of a new department. The eleventh section gave the Secretary of Commerce and Labor a discretion in special cases, because there were some harmless old Chinamen living in this country for many years who were sometimes valuable to the government as witnesses.<sup>5</sup>

The amendment was adopted after a short debate, and the bill passed the House on April 18, 1904.<sup>6</sup>

This section of the bill was reached in its consideration in the Senate on April 23, when Senator Cullom, of Illinois, proposed an amendment to strike out in Section 5 (formerly Section 3), after the word "condition," the words "except as hereinafter specifically provided," and also to strike out the following sections: 6, 7, 8, 9, 10, 11, 12, and 13.<sup>7</sup> The amendment was agreed to.<sup>8</sup>

Senator Lodge, of Massachusetts, proposed the following amendment to be inserted at the end of the bill:

All Chinese and other aliens whose immigration is encouraged or induced by the agreement of any foreign government or its dependency, with any transportation company, which agreement binds the said government to furnish a certain number of immigrants to such transportation company, or to make payments to such company in case the agreed number of immigrants are not furnished, shall be excluded from admission to the United States.

This amendment, after some explanation of its intent, was adopted.<sup>9</sup>

The bill as amended by the Senate was at first nonconcurrent in the House of Representatives;<sup>10</sup> and on April 27 the report of the appointed conference was submitted to both houses and

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<sup>5</sup>*Congressional Record*, Vol. 38, Part 5, pp. 5082-5084. <sup>6</sup>*Ibid.*, Vol. 38, Part 6, p. 5053. <sup>7</sup>*Ibid.*, p. 5413. <sup>8</sup>*Ibid.*, p. 5420. <sup>9</sup>*Ibid.*, p. 5420. <sup>10</sup>*Ibid.*, p. 5534, April 25.

was agreed to, in which the Senate amendment on the Chinese immigration remained intact.<sup>11</sup> But the bill as approved by the President on April 29, 1904, contained Section 5 in the following version :

That Section 1 of the act of Congress approved April 29, 1902, entitled "An act to prohibit the coming into, and to regulate the residence within, the United States, its Territories, and all the territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent," is hereby amended so as to read as follows: "All laws in force on the 29th of April, 1902, regulating, suspending, or prohibiting the coming of Chinese persons or persons of Chinese descent into the United States, and the residence of such persons therein, including Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the act entitled 'An act to prohibit the coming of Chinese laborers into the United States,' approved September 13, 1888, be, and the same are hereby, reenacted, extended, and continued without modification, limitation, or condition; and said laws shall also apply to the island territory under the jurisdiction of the United States and prohibit the immigration of Chinese laborers, not citizens of the United States, from such island territory to the mainland territory of the United States, whether in such island territory at the time of cession or not, and from one portion of said island territory to another portion of said island territory. Provided, however, that said laws shall not apply to the transit of Chinese laborers from one island to another island of the same group; and any island within the jurisdiction of State or District of Alaska shall be considered a part of the mainland under this section."<sup>12</sup>

The real reason that such a reenactment of the Chinese exclusion laws should be embodied in an appropriation bill is not exactly known. But we learn from Mr. Hitt's speech that there had been introduced in the House some Chinese exclusion bill, with such provisions as contained in the amendment he proposed to the present bill, and that it was referred to the Committee on Foreign Affairs. The situation was that the session was drawing to its close, and the bill had not yet been reported back from the committee. This, therefore, seemed to be the only way to secure favorable action, although Mr. Hitt realized that the amendment might be stricken out in the Senate. "But," he says, "we want it on an appropriation bill, which will prevent delays and insure action."<sup>13</sup>

The propriety of this action was mercilessly assailed by Mr. Williams, of Mississippi, a member of the Committee on Rules, who said :

Nor can I understand how it is possible for a Republican House to sit quietly by while the gentleman from Illinois [Mr. Hitt], who hitherto has had a good record, who has been a law-abiding citizen, raises the red flag of "anarchy" against the rules of this House and offers as an amendment to an appropriation bill a thing which he knows will go out upon a point of order.<sup>14</sup> . . .

No laws were passed in Congress on this subject after the legislation of 1904. There have been some changes made in the rules

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<sup>11</sup>*Congressional Record*, Vol. 38, Part 6, p. 5662; for report, see *ibid.*, p. 5628. <sup>12</sup>U. S. Statutes at Large, 1903-05, Vol. 33, Part 1, p. 428.

<sup>13</sup>*Congressional Record*, Vol. 38, Part 5, p. 5032. <sup>14</sup>*ibid.*, p. 5035.

and regulations in regard to the execution of the exclusion laws. When the Bureau of Immigration became a part of the Department of Commerce and Labor, July 1, 1903, it assumed complete control and authority over the situation and issued definite and detailed instructions regarding the uniform enforcement of the law.

Within one month after the establishment of this department the pamphlet entitled "Digest of Chinese Exclusion Laws and Decisions," issued by the Treasury Department in 1899, was revised and issued under the title "Laws, Treaty, and Regulations Relating to the Exclusion of Chinese," July, 1903.<sup>15</sup>

The discontinuation of the Treaty of 1894, in December, 1904, occasioned necessary changes and resulted in the publishing of a pamphlet of the same title in May, 1905, in which was inserted, in view of the expiration of the Treaty of 1894, the permanent Treaty of 1880. A radical change is found in Rule 59, which provides for a durable certificate of identification of convenient size for carrying on the person.<sup>16</sup>

Finally, in accordance with a report of a committee appointed by the Secretary of Commerce and Labor to consider the existing regulations, another pamphlet was issued superseding all prior publications, entitled "Treaty, Laws, and Regulations Governing the Admission of Chinese; Regulations Approved February 5, 1906." In this issue ten of the former rules have been omitted and three new rules added. These are: Rule 26, providing the conditions under which the domiciled merchants may make short visits to foreign contiguous territory without delay rendered necessary by Rule 25 in cases of making visits to other continents; Rule 37, making provision for transit through the United States of members of the exempt classes without being photographed or measured; and Rule 52, repealing all former regulations inconsistent with the new compilation.<sup>17</sup>

The reasons accounting for the abatement of agitation on the Chinese question in Congress since 1904 may be briefly mentioned as follows:

First, the enforcement of the existing laws has practically stopped the coming of Chinese laborers, not overlooking the fact of surreptitious entering by smuggling or evasion of law. During the five years from 1901 to 1905 the total number of departures was 8,067, and the total number of returns was 8,249, with an increase of less than 200.<sup>18</sup>

Secondly, the Japanese immigration has assumed such large proportions as to distract the attention of the Pacific Coast from the Chinese immigration question.

Thirdly, the Chinese boycott of American goods, instituted both

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<sup>15</sup>House Document No. 847, Fifty-Ninth Congress, First Session, Vol. 50, p. 24. <sup>16</sup>*Ibid.*, p. 29. <sup>17</sup>*Ibid.*, p. 24. <sup>18</sup>*Ibid.*, p. 76.

at home and abroad in 1905 as a retaliation for the unjust treatment of Chinese in the United States, has aroused a reactionary sentiment in this country against the policy of Chinese exclusion; and this influence was even felt by the direct agency in charge of the enforcement of the law.

On May 19, 1905, Commissioner General Sargent, of the Bureau of Immigration, issued a circular to all the Chinese inspectors warning them against improper treatment of Chinese:

You are hereby directed to issue to each officer under your jurisdiction charged with the enforcement of the provisions of the law relating to the exclusion or arrest and deportation of Chinese persons specific and imperative instructions that in the performance of their duties every possible endeavor shall be exercised to prevent the incurrences of any just cause for complaint concerning the treatment accorded Chinese in either word or deed.<sup>18</sup>

Finally, in 1907, this sentiment crystallized in the opinion of Mr. Straus, Secretary of Commerce and Labor, who says in his report to the President:

The real purpose of the government's policy is to exclude a particular and well-defined class, leaving other classes of Chinese, except as they, together with all the foreigners, may be included within the prohibitions of the general immigration laws, as free to come and go as the citizens and subjects of any other nation. As the laws are framed, however, it would appear that the purpose was rigidly to exclude persons of the Chinese race in general and to admit only such persons of the race as fall within certain expressly stated exemptions, as if, in other words, exclusion was the rule and admission the exception. I regard this feature of the present laws as unnecessary and fraught with irritating consequences.<sup>19</sup>

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<sup>18</sup>House Document No. 847, Fifty-Ninth Congress, First Session, Vol. 50, p. 149.

<sup>19</sup>"Annals of American Academy of Political and Social Science," Vol. 34, p. 364.



## CHAPTER XIII

### CONCLUSIONS

As a student of society this study suggests to the writer's mind a series of pertinent questions. No study of any historical episode would be complete and valuable without a perspective view of its significance and meaning in its causal relations to the destinies of humanity, following the law of antecedence and consequence.

It has been forty years since the "sand lot" agitation in California (1876), thirty-six years since the first Federal measure of exclusion (1880), and twelve years since the last act of Congress (1904), which will remain in force we know not how long. In conjunction with all the humane laws and wise measures, this stands a peculiar chapter in the history of the American legislation. Who doubts but that the government of the United States has been conscientious in dealing with this question of Chinese immigration?

#### *Right of Migration*

Well might we ask the question, What is the right of migration? It is an individual right following the economic law of demand and supply of commodity as well as of labor. A man cannot be lawfully denied the right to do lawful work where his labor is better paid. It is a social right. Vattel, speaking of emigration, says:

There are cases where a citizen has an absolute right to renounce his country—a right founded on reasons derived from the nature of social compact. If the citizen cannot procure subsistence in his own country, it is undoubtedly lawful for him to seek it elsewhere.<sup>1</sup>

It is also a natural right. The world is a common possession. No people can be justified in withholding unused what other people can use and urgently need. Vattel, on the topic of "Right of Innocent Use" of foreigners, says:

Nature, who designs her gifts for the common advantage of mankind, does not allow us to prevent the application of those gifts to a useful purpose which they may be made to serve without any prejudice to the proprietor and without any diminution of the utility and advantage he is capable of deriving from his rights.<sup>2</sup>

He further says:

It would certainly be a great deviation from that universal benevolence which ought to unite the human race to refuse a considerable advantage to an individual, or the whole nation, whenever the grant of it might happen to be productive of the most trifling loss or the slightest inconvenience to ourselves.<sup>3</sup>

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<sup>1</sup>Vattel's "Law of Nations," Book 1, Chapter xix., No. 223, pp. 105-106.

<sup>2</sup>*Ibid.*, Book 2, Chapter ix., No. 127, p. 181.

<sup>3</sup>*Ibid.*, Book 2, Chapter x., p. 183.

Above all, in the case of Chinese immigration it is a covenanted right. In the Treaty of 1868 both China and the United States recognized "the inherent and inalienable right of man to change his home and allegiance and also the mutual advantage of free migration and emigration of their citizens and subjects from one country to the other for the purposes of curiosity or trade or as permanent residents."<sup>4</sup> This principle was urged upon China in the face of the existing penal code of China, forbidding her subjects going out of the country.<sup>5</sup>

In view of these well-established rights of migration, the other right of suspension and prohibition seems difficult to reconcile. Then the second question naturally suggests itself, What was the occasion for restriction?

*The Grievances Incident upon the Presence of Chinese*

There are two sides to this question. The demagogues and politicians, taking advantage of the hard conditions of the lowering wages and increasing unemployment on the Pacific Coast and capitalizing the ignorance and volatility of the working people, hurled the Chinese question into the political arena and took issue on it for party interests. This was particularly true when the Workingmen's Party became a well-formed organization in California. They charged the Chinese with being immoral, filthy, servile, unassimilative, with impoverishing the country and depriving the whites of employment.

On the other hand, it would not have been possible for the working people to believe in those charges if none of these conditions had existed among the Chinese immigrants at all. Therefore it is expedient for us to try to ascertain the extent to which the Chinese were responsible for the success of the anti-Chinese agitations in the early days of their stay in this country. First, it would be vain to deny that there were gambling, opium-smoking, feuds, and prostitution among Chinese immigrants. What was this but immorality?

As an example of filthiness we have this statement on record:

The frequent custom with these people is to have the brick-and-mortar bench where the cooking is carried on, the sink, always more or less filthy, and an open, filthy, bad-smelling water closet, all adjoining each other in the same room or under the same cover. Frequently a space at the end of this cooking range (if we may so call it) is used as a urinal, the only outlet from which is the absorption of and seepage through some earth placed there for that purpose, which the intermingling odors of cooking, sink, water closet, and urinal, added to the fumes of opium and tobacco smoke, and the indescribable, unknowable, all-pervading atmosphere of the Chinese quarters, make up a perfume which can neither be

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<sup>4</sup>Article 5 of treaty.

<sup>5</sup>See translation in Executive Document No. 1, Forty-Sixth Congress, Third Session, 1880-81, Vol. 1, "Foreign Relations," Part 1, p. 301.

imagined nor described. This is no exaggeration, nor is it a fancy sketch. It is one of the common features of life in Chinatown.\*

Though this may have been taken from exceptional cases, was it not true?

There is every evidence that the Chinese laborers were freemen. But may not their contract made through intermediary, their submissiveness in working long hours and for low wages without complaint or strike, and their being under the guidance and control of the "six companies" while working in this country until they paid up their debts suggest to the equality-and-liberty-loving Westerner something servile and tending to degrade that labor which was held to be highly honorable? Whether resulting from pride or prejudice, the condition came to be, according to the memorial of the Chinese Exclusion Convention of 1901: "For many years it was impossible to get white persons to do the menial labor usually performed by Chinese. It was Chinaman's labor and not fit for whites."

*"Unassimilative."*—No right-thinking man would take this as a false charge against the Chinese. The very existence of the Chinatown in a foreign country is proof enough. The "shirt outside the pants" (a remark made by Senator Cox, of New York) and the silk slippers are seen even nowadays in San Francisco, New York, and other places. And the always-in-the-way queue disappeared only a few years since. In a paper read before the Social Science Association at Saratoga, N. Y., September 10, 1879, S. W. Williams gave the following statistics, which will serve to show the degree of assimilation of the Chinese in this country:<sup>8</sup>

Total average attendance at evening schools for Chinese.	825
Total roll call .....	2,750
In Sunday schools, average.....	1,100
Roll call on Sunday schools.....	3,300
Chinese baptized in the United States.....	400
Native Churches in Presbyterian Mission.....	2
Chinese pastors, teachers, and helpers.....	15

*"Impoverishing the Country."*—If by this is meant that the Chinese sent their money home, the charge is not altogether without foundation. At least we can gather some information from the following account:

Thus it will be observed that, counting ten months in the year and twenty-six working days in a month, wages averaging \$1 per day, the wages would be \$260 per year per head, . . . in the year 1884. The cost of living per head does not exceed \$100 per year, including rent. Seventy-five per cent of his food and clothing is imported from China, so that out of the \$260 per year earned by a Chinaman, less than \$20, exclusive of rent, goes to increase the wealth of this nation.<sup>9</sup>

\*Senate Document No. 137, "Meat vs. Rice," Fifty-Seventh Congress, First Session, Vol. 13, p. 16. *Ibid.*, p. 15. "Chinese Immigration," p. 44.

<sup>8</sup>Senate Document No. 137, "Meat vs. Rice," Fifty-Seventh Congress, First Session, Vol. 13, p. 13.

James D. Phelan, Mayor of San Francisco, said in 1901 that it has been estimated that the Chinese since 1868 have exported from the United States \$400,000,000 in gold, sent to their homes.<sup>10</sup> The case may not be quite as described above, but we know that Chinese laborers did send their money home.

As to depriving the whites of employment, it was an indisputable fact during the period of readjustment of the labor market when the supply was more than the demand. Here is a general statement of the Chinese consul at San Francisco:

Suddenly the road [Central Pacific Railroad] was finished, and the army of fifteen thousand laborers were idle and at large. In a strange land, among strange people, with no capital but their ability and willingness to work, they [Chinese] flocked to San Francisco. Industries of the city could not absorb so many without displacing many of those who already held jobs. But the Chinese had to live. They could live on very little. They enjoyed the reputation of being superior workers to whites; so on every hand were found employers who discharged their white employees and put Chinese at lower wages in the vacancies thus made.<sup>11</sup>

These Chinese have been charged with these dangerous characteristics, evidence has been procured to sustain these charges, and consequently discontent expressed itself in acts of violence. Then what is the ground for complaint that the government of the United States passed laws to regulate, limit, suspend, and prohibit the coming of the Chinese laborers, as it did?

#### *Justification of Exclusion Laws*

The exclusion laws find their justification in the State right of self-preservation. Speaking on the right of residence of aliens, Vattel says:

On the other hand, every nation has a right to refuse to admit a foreigner into her territory, when he cannot enter it without exposing the nation to evident danger or doing her manifest injury.<sup>12</sup>

According to this principle, Secretary Everett says:

This government could never give up the right of excluding foreigners whose presence they might deem a source of danger to the United States.<sup>13</sup>

But the law is not justified if it is a product of demagogy, political machinations, and race prejudice. Consider the statement of the Mayor of San Francisco, who says:

It is not a question of wealth, nor whether the wages of Chinese are higher or lower than ours. It is a question of having the Chinese at all.<sup>14</sup>

<sup>10</sup>*North American Review*, Vol. 173, "Why the Chinese Should Be Excluded," p. 670.

<sup>11</sup>*Forum*, Vol. 29, 1900, "The Attitude of the United States toward the Chinese," Ho Yow, p. 389.

<sup>12</sup>Vattel's "Law of Nations," Book 1, Chapter xix., No. 230, p. 107.

<sup>13</sup>Mr. Everett to Mr. Mann, December 13, 1852, manuscript Dominican Letter, quoted from Wharton's "International Law Digest," Vol. 2, p. 516.

<sup>14</sup>*North American Review*, Vol. 173, "Why the Chinese Should Be Excluded," James D. Phelan, p. 672.

It is not justified if the real grievances do not warrant the measure of exclusion. After the California Senate presented their memorial to Congress (1876) setting forth reasons for Chinese exclusion, B. S. Brooks, counselor at law, for twenty years a resident in California, sent a memorial to the Committee on Foreign Relations of the United States Senate in which he refuted many false or exaggerated charges made by the Senate of California. Here I shall quote at length a few points in the order as given in the memorial:<sup>15</sup>

Chinamen send their earnings home. . . . The wealth they create cannot be sent away, nor the food they eat. The amount of surplus which a laboring man can save over and above his support and personal expenses is all that he can send away, and that amounts to very little.<sup>16</sup>

There are not 10,000 criminals, nor 2,000 prostitutes, nor anything like it. . . . The proportion of criminals is not greater than, if as great as, among other people. There are not 5,000 prostitutes—no more in proportion to Chinese population than there are white prostitutes to white population.<sup>17</sup>

To say that "in these six blocks [constituting the Chinatown] they do all these things, hold secret tribunals, have prisons, hospitals, opium dens, gambling places and lotteries, concerted schemes of villainy, and practice of unnatural debaucheries, in defiance of all laws of morality and decency and in utter contempt and disregard of all municipal ordinances for their government and control," all within the compass of six small blocks, is a gross libel on the city of San Francisco. But it is not true, and any citizen of that city ought to be ashamed to charge it.<sup>18</sup>

I have never seen any evidence that young girls were purchased from their parents or indentured to a life of infamy, nor that prostitution was with the Chinese a legitimate or honorable pursuit. I have heard of contracts signed by prostitutes and of transfers of such contracts. . . . But I have heard of similar transactions among the white prostitutes.<sup>19</sup>

The assertion that "every adult Chinaman who has tolled in our State has usurped the place of a white laborer, who would gladly have performed the work that the Chinese have taken to themselves," is without foundation, as the memorialists themselves show. The very list of employments that they give shows that their employments are not those generally followed by white people. They work as domestic servants, in the country, on farms and ranches, at wayside inns, and in small villages, where the Irish girl will not go because there is no Church. Cigar-making Chinese do their share better than other people, but they compete only with other foreigners, and the employment is exotic. Boots and shoes would not be manufactured without their labor. Slippers they make of carpet, and the carpet dealers profit by the sale of all their fragments, and their customers get the benefit of lower prices.<sup>20</sup>

In the manufacture of ropes, woolens, silk ribbons, mattings, and bags, the manufacturer will tell you that without Chinese labor they must close. In certain kinds of fishing they compete with no one, and the other fishermen are Italians, Greeks, and Portuguese. In vegetable-raising they beat the world. I wish the charge that they drive out peddlers were true.

<sup>15</sup>"The Chinese in California," B. S. Brooks, to the Committee on Foreign Relations of the United States Senate.

<sup>16</sup>A California surveyor-general, testifying before the Congressional Investigating Committee, which held its session in San Francisco in 1876, declared that the Chinese up to that time had added \$289,700,000 to the wealth of California in the redemption of the tule lands alone. (*Forum*, Vol. 29, Ho Yow, p. 392.)

<sup>17</sup>*Ibid.*, p. 3. <sup>18</sup>*Ibid.*, pp. 5-6. <sup>19</sup>*Ibid.*, p. 9. <sup>20</sup>*Ibid.*, pp. 12-13.

In street-picking they have not driven out white people. There never were any in it except one crazy Frenchman. In surface-mining they work only abandoned diggings, which the white miner has exhausted and left. In picking fruit they are indispensable. They may "have taken the places of those who might have emigrated to the State," but, unfortunately, they did not, and there is no one to compete with. If any one is willing to break his back picking strawberries, he can have the place.<sup>21</sup>

The assertion that Chinese can never assimilate with us comes with ill grace from those who at the beginning of this session came panting with excitement to demand the passage of a law forbidding this people to become naturalized.<sup>22</sup>

There is no danger of fire or pestilence. The fact that no fire or pestilence has ever originated there is evidence enough of that. Personally, the Chinaman is scrupulously clean. As I said, the Chinese laborer washes himself from head to foot each day. The smell of opium and of other things pervades their habitation and is strange to American nostrils, offending noses which will take in the smell of garlic, onions, boiled cabbage, and tobacco spit without flinching; but there is nothing dirty or impure about it. . . . But where so many are congregated, there must necessarily be a great deal of kitchen refuse and offal which ought to be removed. If it can be shown that the city of San Francisco has made proper provision for this, the Chinaman should be punished if he has not availed himself of it; but if the city has made no provision, as is the fact so far as I know, then the absence of pestilence ought to be attributed to the cleanly habits of the Chinese, for San Francisco can take no credit for her cleanly habits.<sup>23</sup>

The exclusion law is not justified when the prosperity of the nation is injured thereby in unwisely condescending to gratify the extravagant whims of certain parts of the country. Let us see what the effect of the exclusion law has been on American commerce alone, not to say anything about the wealth that Chinese labor might have created for this country. Minister Wu Ting-Fang, in his memorial to the government of the United States in 1902, says:

The history of this commerce (see Inclosure No. 6, showing exports from San Francisco to China) is practically a history of the agitation against the Chinese upon the Pacific Coast. In 1872, before the agitation, the exports amounted to upward of \$7,000,000. (The first American vessel that appeared in a Chinese port was in 1874.) The agitation commenced, and in 1876 the exports fell to \$126,000. As soon as President Hayes vetoed the first anti-Chinese bill, the exports increased to over \$9,000,000. Another bill was introduced, and the exports fell to \$185,000. The year after the Geary law was passed the exports were \$123,000. Owing to the just attitude lately assumed by the United States government in China and to the rumor that the exclusion law, which is about to expire, would not be reënacted, a better feeling has prevailed, and the exports have again increased to over \$2,000,000. Had the exports averaged as they did in 1879, they would have been \$200,000,000 more than they have been from the single port of San Francisco.<sup>24</sup>

And, lastly, the law is not justified when in excluding Chinese laborers on these slight grounds the United States is compelled to abandon a principle incorporated in her Constitution—that,

<sup>21</sup>"The Chinese in California," B. S. Brooks, to the Committee on Foreign Relations of the United States Senate, pp. 13-14. <sup>22</sup>*Ibid.*, p. 17. <sup>23</sup>*Ibid.*, p. 21.

<sup>24</sup>Senate Document No. 162, Fifty-Seventh Congress, First Session, p. 15.

Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of life, liberty, and the pursuit of happiness; and whereas, in the recognition of this principle, this government has freely received emigrants from all nations; . . . therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation is declared inconsistent with the fundamental principles of the republic.<sup>25</sup>

And it was this principle that the United States urged upon the North German Confederacy in 1868, upon Austria and England in 1870, and also upon China in the Burlingame Treaty of 1868.<sup>26</sup>

The law is enacted expressly to keep the country from danger or injury. But the enforcement of this law has in a large measure defeated its purpose and proved it a very costly order.

#### *The Enforcement of the Exclusion Law*

Secretary Metcalf, of the Department of Commerce and Labor, pointed out three difficulties in the execution of this law—namely: The divided responsibility of official agencies, the element of citizenship of this country who were antagonistic to the exclusion policy, and the deficient sense of the moral obligation of an oath on the part of the Chinese.<sup>27</sup>

It is not only difficult to enforce, but it is costly. In a period of five years, from 1901 to 1905, the government deported 3,093, costing, besides expenses for arrest and trial, \$324,682.69.<sup>28</sup>

The biased interpretation of the law works hardship and injustice to the exempt classes. Out of a legion of instances I cite the following. According to Rule 1 of the Exclusion Regulations, the intent of the acts of Congress is construed to exclude all Chinese persons except those specifically exempted from exclusion in Article II of the Treaty of 1880, and the enforcement of it resulted in the following cases:

A Chinese by the name of Wah Sang was admitted to this country as a student in theology, and as long as he was a student he was allowed to remain in this country; but when he completed his course in theological training and entered into active service in preaching the gospel to his countrymen under the auspices of the Methodist Church, he was arrested in Texas as a laborer, was tried and deported in February, 1905, the court sustaining the contention of the immigration officials that a preacher is a laborer and therefore subject to the operation of the exclusion law.<sup>29</sup>

A wealthy merchant was arrested at Spokane, Wash., and put in the county jail, where he stayed from the first part of August, 1904, until October 12, on the charge that "the inspector found the Chinaman Wong Chung engaged in manual labor and with no laborer's certificate."<sup>30</sup>

<sup>25</sup>United States Statutes, Fortieth Congress, Second Session, Vol. 15, pp. 223-224. <sup>26</sup>"International Law," Glenn, Chapter viii., p. 130.

<sup>27</sup>House Document No. 847, Fifty-Ninth Congress, First Session, Vol. 50, pp. 5-6. <sup>28</sup>*Ibid.*, p. 76.

<sup>29</sup>"The Treatment of Exempt Classes," p. 8, Dr. Ng Poon Chew, editor of a Chinese newspaper in San Francisco.

<sup>30</sup>House Document No. 847, Fifty-Ninth Congress, First Session, Vol. 50, p. 138.

But the Chinese laborers cannot always plead themselves innocent victims of the law. The fraudulent procurement of certificates,<sup>31</sup> the coaching devices of sending information to the newcomers in packages of peanuts or gold teeth,<sup>32</sup> the smuggling in freight cars,<sup>33</sup> the case of an alleged daughter,<sup>34</sup> laborers posed as minor sons,<sup>35</sup> evidence of fraud in transit cases<sup>36</sup>—if these cases are true at all, allowing them to be much exaggerated, it is enough to embarrass any one pleading against the injustice of the exclusion law.

Fortunately, this number has been very small, and they are regarded as equal enemies to China as to America. Therefore no intelligent man would say that the exclusion law was enacted and enforced for the sole purpose of keeping out these few lawless persons, regardless of the hardship caused to the exempt classes. The boycott of 1905 was evidence enough that it was the law-abiding citizens of both countries that resented this policy of discrimination.

No one who is not willfully blind can fail to realize the inconvenience and danger of having a large mass of unassimilative people in this country. But, in view of the progress of the world, the question naturally suggests itself, Are the Chinese going to become more exclusive in keeping within their own territory, or will they become more progressive in mingling with the world? If the former is to be true in the near future, then it will be unnecessary for the United States to keep up this wall of exclusion. If the latter is inevitable, then it will be a wise policy to keep them out; but will these laws be strong enough to do so? And the present accumulation of ill feeling would be to no purpose.

#### *The Possible Solution of This Problem*

As early as 1869 Richardson made some very practical and wise suggestions as to the solution of the problem: First, remove the Chinaman's disability to testify in the court; secondly, encourage him to bring his woman; thirdly, educate his children; and, fourthly, give him suffrage.<sup>37</sup> These four suggestions would give the Chinese better protection, make him loyal to this country, make him receptive to American ideas, and make him valuable in the eyes of politicians. The sane people of both countries saw the solution of the problem not far distant.

When the boycott of American goods became general in China, a number of American and Chinese merchants—note that they were not mis-

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<sup>31</sup>Of 1,245 viséed "merchant" certificates, 277 were found to be in possession of laborers. House Document No. 847, Fifty-Ninth Congress, First Session, Vol. 50, p. 59.

<sup>32</sup>*Ibid.*, p. 10. For copy of coaching paper, both in English and Chinese, see Senate Report No. 776, Fifty-Seventh Congress, First Session, Vol. 10, p. 470. <sup>33</sup>House Document No. 847, p. 14. <sup>34</sup>*Ibid.*, p. 68. <sup>35</sup>*Ibid.*, p. 68.

<sup>36</sup>*Ibid.*, pp. 81f. <sup>37</sup>*Atlantic Monthly*, Vol. 24, "John," p. 750.



sionaries—met to discuss the matter. The American merchants and Chinese guilds agreed on twelve points, as follows: (1) That laborers excluded by the Treaty of 1880 should be defined according to standard dictionaries. (2) That all other regulations affecting Chinese exclusion should be agreed on by both nations before being put in force. (3) That our [American] government accept our consuls' certificates as to those not laborers and that they be admitted without molestation. (4) That consuls give such certificates without delay to those not laborers. (5) That medical examination of Chinese immigrants be made by physicians mutually appointed. (6) That Chinese once admitted be treated just like other foreigners, with no special disadvantage. (7) That Chinese passing through this country be not molested in their transit. (8) That registration of Chinese residents be no longer required. (9) That Chinese laborers be admitted into Hawaii and the Philippines, if those islands want them. (10) That Chinese entering into ports and detained for inquiry be allowed to land and to have full privilege of defense and of correcting any flaw or error in their papers. (11) That a Chinese resident here be allowed to bring his wife and children. (12) That Chinese lawfully admitted here, but deported because of failure to register, be allowed to return if they prove to be possessed of property here to a specified amount."

Already we have seen hopeful signs of a better settlement of the Chinese question in this country. In 1905 President Roosevelt said in his annual address to Congress:

In the effort to carry out the policy of excluding Chinese laborers—Chinese coolies—grave injustice and wrong have been done by the nation to the people of China and, therefore, ultimately to this nation itself. Chinese students, business and professional men of all kinds—not only merchants, but bankers, doctors, manufacturers, professors, travelers, and the like—should be encouraged to come here and be treated on precisely the same footing that we treat students, business men, travelers, and the like of other nations. . . . There would not be the least danger that any such provisions would result in any relaxation of the law about the laborers. These will, under all conditions, be kept out absolutely. But it will be more easy to see that both justice and courtesy are shown, as they ought to be shown, to other Chinese if the law or treaty is framed as above suggested."

This great and admirable statesman was thinking about the "other Chinese." But what about the laborers in the future?

It is no solution of the problem that omits the main phase of the question. This is, in the main, the exclusion of Chinese laborers. And as long as there are laborers among the Chinese no solution is reached which does not provide for the Chinese laborers who may be emigrants from China.

If the present policy is sound, wise, and in accordance with eternal truth and justice, then let it be pursued and maintained, cost what it may. But it would do no harm to pause and think whether it is. Here is an exemplary statement voicing the opinion of the cool and far-seeing of this country. Mr. Sidney L. Gulick, writing in 1914, said:

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<sup>22</sup>*The Independent*, Vol. 60, 1906, "The Chinese Peril" (editorial), p. 407.

<sup>23</sup>"Annals of American Academy of Political and Social Science," Vol. 34, p. 364.

The policy is fundamentally wrong. In the first place, it is humiliating to Asiatics. Exclusion entirely on the basis of race contradicts the most fundamental characteristics of human nature, the sense of intrinsic manhood, worth, and rights. The natural and entirely justifiable self-respect of Chinese, Japanese, and Hindu is affronted. So long as they are nationally helpless, we may, indeed, feel no ill results from this policy; but when China becomes as completely Westernized and armed as Japan is to-day, China will insist, as Japan insists, that we accord Asiatics equality of treatment with that granted to aliens of other lands.<sup>40</sup>

Mr. Gulick goes on and sets forth clearly that the Asiatic exclusion policy is an economic blunder, because it erects an artificial protection for the American people which cannot be permanently maintained. Moreover, it is a mutually destructive policy, as it promotes mutual antipathy, fear, and suspicion between the white and yellow races so much as to increase the chance of white and yellow perils and produce increasing militarism in both the East and the West. He ventures a solution by suggesting a new immigration law which will deal with all immigrants alike, regardless of color and race. In this scheme Mr. Gulick thinks that a Bureau of Alien Registration and Education is needed to supervise the education of all aliens. The Bureau of Immigration and Naturalization should be divided and their functions extended. The admission to citizenship should be based upon moral and educational qualification. A national commission of biological and social assimilation is needed. Through the studies of this commission wise laws may be made to regulate intermarriage of individuals of different races. This he calls "a new Oriental policy."<sup>41</sup> But the truth is old.

It is greatly to be hoped that the Christian spirit and chivalrous temperament of this great people will help to realize this happy vision at an early date.

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<sup>40</sup>*The Survey*, Vol. 31, "The Problem of Oriental Immigration," p. 720.

<sup>41</sup>*Ibid.*, pp. 720-722, 730.

## APPENDIX A

### BURLINGAME TREATY

*Additional articles to the treaty between the United States and China of June 18, 1858, concluded July 28, 1868. Ratifications exchanged at Peking November 23, 1869.<sup>1</sup>*

(Articles 1 and 2 omitted.)

*Article 3.* The Emperor of China shall have the right to appoint consuls at the ports of the United States, who shall enjoy the same privileges and immunities as those which are enjoyed, by public law and treaty of the United States, by the consuls of Great Britain and Russia, or either of them.

*Article 4.* Article 29 of the Treaty of June 18, 1858, having stipulated for the exemption of Christian citizens of the United States and Chinese converts from persecutions in China on account of their faith, it is further agreed that citizens of the United States in China of every religious persuasion and the Chinese subjects in the United States shall enjoy entire liberty of conscience and shall be exempt from all disability or persecution on account of their religious faith or worship in either country. Cemeteries for sepulcher of the dead, of whatever nativity or nationality, shall be held in respect and free from disturbance or profanity.

*Article 5.* The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance and also the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from the one country to the other, for the purpose of curiosity or trade or as permanent residents. The high contracting parties therefore join in reprobating any other than an entirely voluntary emigration for these purposes. They consequently agree to pass laws making it a penal offense for a citizen of the United States or a Chinese subject to take Chinese subjects either to the United States or to any other foreign country, or for a Chinese subject or citizen of the United States to take the citizens of the United States to China or to any other foreign country, without their free and voluntary consent.

*Article 6.* Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities, or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation, and, reciprocally, Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation. But nothing herein contained shall be held to confer naturalization upon citizens of the United States in China or upon the subjects of China in the United States.

*Article 7.* Citizens of the United States shall enjoy all the privileges of the public educational institutions under the control of the government of China, and, reciprocally, Chinese subjects shall enjoy all the privileges of the public educational institutions under the control of the government of the United States, which are enjoyed in the respective countries by the citizens or subjects of the most favored nation. The citizens of the United States may freely establish and maintain schools within the empire of China at those places where foreigners are by treaty permitted to reside, and, reciprocally, Chinese subjects may enjoy the same privileges and immunities in the United States.

(Article 8 omitted.)

WILLIAM H. SEWARD,  
ANSON BURLINGAME,  
CHIH-KANG,  
SUN CHIA-KU.

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<sup>1</sup>"Treaties and Conventions Since July 4, 1776," Forty-First Congress, Third Session, 1870-1871, pp. 165-168.

## APPENDIX B

TREATY OF NOVEMBER 17, 1880<sup>1</sup>

(Preamble omitted.)

*Article 1.* Whenever, in the opinion of the government of the United States, the coming of Chinese laborers to the United States or their residence therein affects or threatens to affect the interests of that country or to endanger the good order of the said country or of any locality within the territory thereof, the government of China agrees that the government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation, or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse.

*Article 2.* Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation.

*Article 3.* If Chinese laborers or Chinese of any other class now, either permanently or temporarily, residing in the territory of the United States meet with ill treatment at the hands of other persons, the government of the United States will exert all its powers to devise measures for their protection and to secure to them the same rights, privileges, immunities, and exemptions as may be enjoyed by the citizens or subjects of the most favored nation and to which they are entitled by treaty.

*Article 4.* The high contracting powers having agreed upon the foregoing articles, whenever the government of the United States shall adopt legislative measures in accordance therewith, such measures will be communicated to the government of China. If the measures as enacted are found to work hardship upon the subjects of China, the Chinese Minister at Washington may bring the matter to the notice of the Secretary of State of the United States, who will consider the subject with him; and the Chinese Foreign Office may also bring the matter to the notice of the United States Minister at Peking and consider the subject with him, to the end that mutual and unqualified benefit may result.

JAMES B. ANGELL,  
JOHN F. SWIFT,  
WILLIAM HENRY TRESGOT,  
PAO CHUN,  
LI HUNG-TSAO.

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<sup>1</sup>Executive Document No. 1, Forty-Seventh Congress, First Session, Vol. 1, "Foreign Relations," Part 1.

## APPENDIX C

CHINESE POPULATION IN THE MINING COUNTIES IN CALIFORNIA IN 1870<sup>1</sup>

Counties	Chinese
Amador .....	1,619
Butte .....	2,070
Calaveras .....	1,431
Del Norte .....	216
El Dorado .....	1,551
Kern .....	142
Klamath .....	542
Mariposa .....	1,071
Mono .....	41
Nevada .....	2,617
Placer .....	2,401
Plumas .....	908
San Bernardino .....	16
San Diego .....	71
Shasta .....	571
Sierra .....	809
Siskiyou .....	1,439
Stanislaus .....	805
Trinity .....	1,095
Tuolumne .....	1,511
Yuba .....	2,324

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<sup>1</sup>Quoted from "Resources of California," J. S. Hittell, pp. 296-297.

## APPENDIX D

CHINESE IN THE UNITED STATES DISTRIBUTED ACCORDING TO THE  
CENSUS OF 1880<sup>1</sup>

State	No. of Chinese	State	No. of Chinese
Alabama .....	4	Missouri .....	92
Arizona .....	1,630	Montana .....	1,764
Arkansas .....	134	Nebraska .....	18
California .....	75,025	Nevada .....	5,420
Colorado .....	610	New Hampshire .....	14
Connecticut .....	124	New Jersey .....	176
Dakota .....	238	New Mexico .....	55
Delaware .....	1	New York .....	919
District of Columbia.....	13	North Carolina .....	....
Florida .....	18	Ohio .....	114
Georgia .....	17	Oregon .....	9,513
Idaho .....	3,378	Pennsylvania .....	160
Illinois .....	210	Rhode Island .....	27
Indiana .....	33	South Carolina .....	9
Iowa .....	47	Tennessee .....	26
Kansas .....	19	Texas .....	141
Kentucky .....	10	Utah .....	501
Louisiana .....	473	Vermont .....	....
Maine .....	9	Virginia .....	6
Maryland .....	5	Washington .....	3,182
Massachusetts .....	273	West Virginia .....	14
Michigan .....	27	Wisconsin .....	16
Minnesota .....	53	Wyoming .....	913
Mississippi .....	52	Total .....	105,448

<sup>1</sup>From Appendix, "Chinese Immigration," G. F. Seward.

## APPENDIX E

CHINESE IMMIGRATION TO THE UNITED STATES FROM 1820 TO 1910<sup>1</sup>

Year	No. of Arrivals	Year	No. of Arrivals	Year	No. of Arrivals
1820	...	1851	...	1881	11,890
1821	1	1852	...	1882	39,579
1822	...	1853	42	1883	8,031
1823	...	1854	13,100	1884	279
1824	...	1855	3,526	1885	22
1825	1	1856	4,733	1886	40
1826	...	1857	5,944	1887	10
1827	...	1858	5,128	1888	26
1828	...	1859	3,457	1889	118
1829	1	1860	5,467	1890	1,716
1830	...	1861	7,518	1891	2,836
1831	...	1862	3,633	1892	...
1832	...	1863	7,214	1893	472
1833	...	1864	2,975	1894	1,170
1834	...	1865	2,942	1895	539
1835	...	1866	2,385	1896	1,441
1836	...	1867	3,863	1897	3,363
1837	...	1868	5,157	1898	2,071
1838	...	1869	11,900	1899	1,660
1839	...	1870	14,624	1900	1,247
1840	...	1871	7,135	1901	2,459
1841	2	1872	7,788	1902	1,649
1842	4	1873	20,292	1903	2,209
1843	3	1874	13,776	1904	4,309
1844	3	1875	16,437	1905	2,166
1845	6	1876	22,781	1906	1,544
1846	7	1877	10,594	1907	961
1847	4	1878	8,992	1908	1,397
1848	...	1879	9,604	1909	1,943
1849	3	1880	5,802	1910	1,968
1850	3	Total from 1820 to 1910, 326,060.			

<sup>1</sup>From abstracts of reports of the Immigration Commission, 1910, Vol. 1, pp. 65-96.

APPENDIX F

ARRIVALS OF CHINESE WOMEN IN THE UNITED STATES FROM 1835 TO 1910<sup>1</sup>

Year	No. of Arrivals	Year	No. of Arrivals	Year	No. of Arrivals
1835-1851	16	1871	346	1891	233
1852	...	1872	183	1892	241
1853	...	1873	892	1893	179
1854	673	1874	243	1894	247
1855	2	1875	385	1895	116
1856	16	1876	260	1896	59
1857	452	1877	77	1897	29
1858	320	1878	354	1898	10
1859	487	1879	358	1899	2
1860	29	1880	70	1900	12
1861	515	1881	83	1901	42
1862	650	1882	136	1902	123
1863	1	1883	47	1903	40
1864	164	1884	100	1904	118
1865	10	1885	123	1905	145
1866	5	1886	92	1906	140
1867	4	1887	89	1907	97
1868	46	1888	80	1908	133
1869	974	1889	68	1909	170
1870	1,116	1890	318	1910	219

<sup>1</sup>Combination of the statistics as given in the abstracts of the report of the Immigration Commission, 1910, Vol. 1, pp. 82-96, and in the table in the Appendix of "Chinese Immigration," by Mary Roberts Coolidge.



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